Brown

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PRIVILEGED COMMUNICATIONS IN EQUITY SUITS.[1]

It has long been a moot question of much moment, whether equity protects a person not under any fiduciary relation to, or having any community of interest with, any other person who has made a communication to a solicitor or counsel, professionally on his own behalf alone, and which relates to property which is not the subject of any suit or dispute at the time, from disclosing such communications.

This point was involved, and to some extent was cleared up, though by no means wholly, in the case of *Pearce* v. *Pearce*, 1 De Gex & Smale, 12.

In that case V. C. Knight Bruce said:—

"In conclusion, I may, perhaps, be permitted to observe, that, having, while considering these exceptions, as well as before, for the purpose of a very different case (*Combe* v. *The City of London*), looked at many, if not all, of the judicial opinions that are reported as having from time to time, during the last twenty-five years, been pronounced in our courts of equity as to the circumstances in which, and the extent to which, a suitor can enforce against his adversary a discovery of documents, I was then, and I have now, been much struck with their manner and variety. This, during a period at once so short and so modern, is remarkable surely, when the nature and character of the subjects are considered in connection with the length of time during which a system of equitable jurisdiction has been established by this country."

It will be seen that this case admits the principle of law, which is incontrovertible, that a client is exempted from discovering communications between himself and his counsel or solicitor after litigation, commenced or threatened, and also if such communication were made on behalf of

[1] From the London Law Magazine for August, 1854.

the party communicating, and also of some other person, such other person would be entitled to discovery; and the cases on this subject will not be the subject of the present review, except so far as they deduce the principle under consideration; but the learned vice-chancellor expressed his decided opinion that the protection thus afforded does not stop here, and that equity will equally interfere to prevent the discovery of communications made by a person not under any fiduciary relation to, or having any community of interest with, any other person on his own behalf alone when the subject of communication is not the subject of any suit or dispute at the time. From the course pursued by the vice-chancellor his opinion cannot be considered as a judicial decision on this point, and, as the cases previously decided have not carried the privilege so far, however much the inclination of opinion in many of them may justify the adoption of such a rule at the present day, an examination of the cases will form the subject of the following pages.

The first case is *Radcliff* v. *Fursman*, 3 Bro. P. C. 538, decided by the House of Lords. The next in order were *Richards* v. *Jackson*, 18 Vesey, 474; *Stanhope* v. *Roberts*, 2 Atk. 214; *Walker* v. *Wildman*, 6 Madd. 47; *Preston* v. *Car*, 1 Y. & Fer. 175; *Hughes* v. *Biddulph*, 4 Russ. 190; *Greenough v. Gaskell*, 1 Myl. & K. 198; *Knight* v. *Marq. Waterford*, 2 Y. & Col. 37; and hosts of others followed, most of which kept up the old restrictions till the case of *Woods* v. *Woods*, 14 Law J., Chan. 9.

Two suits had been instituted. The first was a suit by a *cestui que* trust against his trustee, to set aside a purchase by the trustees of the trust estate made more than forty years since; the second was by the trustee (the purchaser) against the *cestui que* trust for discovery, and it charged that the *cestui que* trust, some fifteen years back, had taken the opinion of the late Mr. Bell upon his right to the property in question; and, after setting out the alleged opinion at full length in the pleadings, the bill sought, among other things, a discovery and production of such opinion. The defendant, by his answer, admitted that he had taken the opinion of Mr. Bell on his title, but insisted that he was not bound to set it out or to produce it.

Mr. Millar, for the plaintiff in the second suit, now moved for the production of the opinion, and he contended that the opinion, having been taken in a matter in which both the plaintiff and defendant were interested, and at so dis-

tant a period, it must be considered as part of the title of both parties; that the principle upon which the court refused the production of opinions was that they could not be evidence of facts; but that, in the present case the opinion might be evidence of a material fact, namely, that the defendant was in full knowledge of all his rights so far back as fifteen years ago.

Mr. Shebbeare, *contra*, contended that all the authorities had excepted opinions from the general rule as to production; that, in this case, the relation of *cestui que* trust and trustee made no difference, as the opinion was taken by the *cestui que* trust adversely to the trustee, and for the purpose of impeaching his title.

Wigram, V. C.:—

"The only question upon which I was called upon to exercise my judgment was, whether I should order the opinion in question to be produced. Attending to the admission in the answer, and the issue in the cause, there can be no doubt that the opinion may be very material to the plaintiff's case. The plaintiff, therefore, will, *primâ facie*, upon general principles, be entitled to have it produced, unless the defendant has shown by his answer that the document is privileged. If that is shown it will become unnecessary to consider whether the document might be material or not to the plaintiff's case. It was stated by Mr. Millar, as I understood his argument, that Lord Langdale had lately decided, in a case of *Flight* v. *Robinson*, that the opinions of counsel are not privileged when it appears that they may be material to the plaintiff's case. Upon referring to that case, however, it appears that Lord Langdale distinctly recognized the authority of the cases which determine that such documents generally are privileged, and that afterwards, in the order that he made for the production of the documents, he carefully excepted those which fell within the scope of the decided cases establishing that privilege. That case leaves the authorities precisely as they stood before. In order to avoid a repetition of my own opinion upon the point, I shall refer only to the case of *Lord Walsingham* v. *Goodricke*, in which I had occasion fully to consider the subject. I remain of the opinion I then expressed, that, whilst the state of the law renders impossible for parties to be their own lawyers, and to act without professional advice, it is indispensably necessary that the privilege now conceded to professional communications, should be maintained at least to the extent to which it is now established. I have looked into the bill and answer in these suits, and by the latter it appears that the opinion in question was taken after the dispute had arisen, which dispute is the subject of the original and cross cause now before me, and that it was taken for the guidance of one of the parties in respect of that very dispute. There cannot be any doubt that an opinion taken under such circumstances, and for such a purpose, was privileged at the time it was taken; and as the dispute has become the subject of the present litigation, I think it clearly retains its privilege in this suit. I give no opinion as to the obligation of the defendant to answer any of the particular charges or interrogatories; my judgment is confined exclusively to the production of the opinion itself."

One of the last cases is that of *Hawkins* v. *Gathercole*, 20 Law J., Chan. 303. The defendant Gathercole, who

was a clergyman, purchased the advowson of Chatteris Nuns in 1815, and then mortgaged the advowson to the plaintiff for 24,000*l.* The defendant afterwards presented himself to the living. The bill was filed in January, 1850, against Mr. Gathercole and Grantham Robert Dodd, who had acted as the solicitor for Mr. Gathercole in these transactions, and also for the plaintiff in regard of the mortgage, and had been appointed receiver of the estate. It charged Mr. Dodd with having, in collusion with Mr. Gathercole, represented the advowson to be of greater value than it really was, and thereby induced the plaintiff to lend his money upon an insufficient security. The bill also charged that the defendants had in their possession divers letters and other documents, whereby the truth of the allegations would appear; and it prayed that the plaintiff might be declared entitled to be paid his mortgage debt in priority over certain other judgment creditors. Defendant, by his answer, stated that he had, in the first schedule, set forth a full list of all the letters in his custody which had passed between him and Mr. Dodd in reference to the purchase of the said advowson and premises, and the subsequent mortgage thereof to the plaintiff; and he submitted that the said letters were privileged communications made by the said G. R. Dodd to defendant in his character as defendant's solicitor, and that he ought not to be called upon to produce them.

On a motion for production of these letters, Lord Cranworth V. C., said:—

"I think that in this case I am relieved from the necessity of entering into the question whether these documents ought to be produced or not; for it seems to me that this is the very point decided by Wigram, V. C., in *Lord Walsingham* v. *Goodricke*. In that case Wigram, V. C., ordered the production of all the letters, except such of them as were stated upon affidavit to contain legal advice or opinions. In this case it is not alleged that any of the letters specified in the schedule were written after the dispute between Hawkins and Gathercole arose; nor is it alleged that any of them contain legal advice or opinions, and, therefore, I shall make a general order for their production."

It is both curious and instructive to trace the gradual development of the principle of equity, and to observe how the more extended wants of the community, by almost imperceptible degrees, enlarge the views of those who administer the jurisdiction of this court, so that a rule, which at first was confined by narrow and well-defined limits, is gradually extended to objects not contemplated in its first establishment, and, in many instances, contrary to established fresh [first?] principles.

Three years later, 1836, *Knight* v. *Marquis of Waterford* was decided by Lord Abinger, C. B. His Lordship expressed a decided opinion against the restriction upon the privilege from discovery of professional communications by the client, and a determination not to extend them; and he was the first judge who considered *Richards* v. *Jackson*, or, as he calls it, "The case in Vesey," in which the circumstances were similar to *Radcliffe* v. *Fursman*, as being decided on the principle that both parties were interested in the case and opinion sought to be produced, and that, therefore, these cases were not authorities in favor of the doctrine that discovery of professional communications could be obtained against a party to the suit when not made with reference to litigation; and his lordship protected letters written by solicitors to their clients in relation to former suits for tithes, but having no reference to the proceedings in the then suit. His lordship's judgment is well worthy of attention, as being a decided extension of the doctrine in question. Lord Cottenham's restricted views were supported by Lord Langdale in *Greenlaw* v. *King*, decided in 1838, in which he was strongly in favor of restricting the privilege from production, and stated his surprise at the extent of the protection sometimes claimed; but he was followed by Knight Bruce, V. C., in *Combe* v. *Corporation of London*, and *Clagett* v. *Phillips*, both decided in 1842, in which his honor showed his inclination in favor of extending the protection, and gave the first germ of the principle which was afterwards matured in *Pearce* v. *Pearce*. The latter of these two cases, *Clagett* v. *Phillips*, materially extended the privilege, for it held that professional communications made pending a dispute where litigation was not contemplated would be protected if litigation afterwards ensued. In the following year vice-chancellor Wigram followed in the onward course, and still further extended the principle of protection, in *Walsingham* v. *Goodricke*, to communications between client and solicitor before any dispute had arisen, so far as they contained legal advice or opinions, but not otherwise; but it will be seen from his honor's judgment, (*ante*), which is an able review of the cases previously decided, that he only restricted from production such parts of the letters as contained legal advice or opinion from deference to the decided cases; for he expressly said, "if the matter were *res integra*, I should scarcely hesitate to decide in favor of the privilege." This was

followed by *Flight* v. *Robinson*, decided by Lord Langdale, who still retained his opinion in favor of restricting the privilege from production, but, in obedience to the authorities, protected documents which could properly be considered as confidential communications between solicitor and client, and which took place either in the progress of the suit, or with reference to the suit previously to its commencement.

Then comes *Holmes* v. *Baddeley*, 1844, in which Lord Lyndhurst, C., goes one step further, and (overruling the decision of Lord Langdale in the court below) extended the privilege from production to letters and cases stated for the opinion of counsel by a party or his solicitor with a view to a suit then in progress, not only in that suit, but in any subsequent litigation with third parties respecting the same subject-matter, and involving the question to which such letters and cases related; and he even went so far as to hint a doubt whether it was material that the question in dispute in the second suit need be the same as that in the first.

The only other case is *Hawkins* v. *Gathercole*, in which it will be seen Lord Cranworth, V. C., adopted the rule in *Walsingham* v. *Lord Goodricke*, and though he ordered letters written before the dispute to be produced, except so far as they contained legal advice or opinions, it does not appear that *Holmes* v. *Baddeley*, and *Reece* v. *Tyre*, were referred to by his Lordship, and it is therefore impossible to say what his decision would have been if protection to these letters had been urged on the authority of those cases.

Of the various learned judges then, whose opinions are embodied in the cases under review, we have Lord Chief Baron Alexander, Lord Cottenham, and Lord Langdale strongly against any extension of the privilege of confidential communications, and, on the other hand, there are Mr. Baron Garrow, Lord Lyndhurst, Lord Brougham, Lord Abinger, Sir James L. Knight Bruce, and Sir James Wigram, in favor of a liberal extension of the doctrine, to whom may be added Sir John Leach, who in *Walker* v. *Wildman*, so far back as 1821, extended the privilege to all professional communications, whether with reference to a suit or action pending or not, though that case does not seem to have been followed in the immediately succeeding cases. Of the first three learned judges we have seen that Lord Langdale has deferred to the authority of Lord Lyndhurst, and carried the privilege one step even beyond the latter

noble lord's decision, whilst Lord Cranworth, when vice-chancellor, acquiesced in the doctrine laid down by Sir James Wigram, in *Walsingham* v. *Lord Goodricke*, though there is no case reported to show how far his lordship would be inclined to extend the doctrine to the full extent.

It will readily be admitted that the principle upon which the privilege from production of confidential communications is claimed, is on the ground of convenience and necessity, for without it there can be no confidence between a client and his professional adviser, and, indeed, that confidence will generally be found to be in exact proportion to the amount of secrecy with which the communications are clothed. This seems to have been admitted and acted upon where discovery is sought from a solicitor; and it has never been doubted, since the case of *Greenough* v. *Gaskell*, that a solicitor is protected in all cases of professional communications from disclosure, though, previous to that case, it was somewhat doubted whether he would be held exonerated from disclosure in all cases; and previous to *Cromack* v. *Heathcote*, 2 Brod. & Bing. 4, decided in 1820, there had been some old cases in which the solicitor's protection was confined to communications made with reference to a cause instituted (see *Wadsworth* v. *Hamshaw*, in a note to *Cromack* v. *Heathcote*.) The latter case, however, decided that the protection of [the] solicitor included all cases in which he was consulted professionally. This privilege has been clearly laid down to be not that of the attorney, but of the client, and it certainly seems useless to afford a client such protection for his own benefit, when all that benefit will be destroyed by the opposite party examining the client instead of the attorney. It will be seen by the observations of Lord Langdale, in *Greenlaw* v. *King*, that his lordship thought that admitting a client to the same extent of privilege as the solicitor would interfere with the well-known rule and jurisdiction of equity, which gives a defendant in an action a right to know all the plaintiff knows, and may be material to his (defendant's) defence. But it is worthy of observation that the privilege contended for does not prevent the defendant-at-law from obtaining a discovery from the plaintiff of all facts and circumstances which have come to his know ledge, material to his defence; it merely says, that the communications made in consequence of such knowledge to a professional adviser, and the particular shape and form those facts have assumed in consequence of such profes-

sional communication, in consequence, that is, of a peculiarly intimate and close connection recognized by equity, and necessary for putting the machinery of courts, both of law and equity, in force, shall not be disclosed to the opposing party, and thus enable him, not merely to obtain the facts reposed in the bosom of his opponent, but the additional advantage of having those facts arranged and collected in the form most advantageous for the party seeking professional advice, and most detrimental to his interests if the information so sought be handed over to his opponent. Surely the maintenance of such a principle cannot interfere with the well-known and well-defined doctrine of equitable discovery. That must always remain a very useful portion of our system of jurisprudence, and cannot be weakened by the maintenance, in all its integrity, of the doctrine of privilege to professional communications.

The cases above reviewed have brought this question to such a very narrow issue at the present day, and the express opinion of many learned judges, who now occupy seats on the judicial bench of this country, being so clearly expressed, it would seem that the expression of the vice-chancellor's opinion, in *Pearce* v. *Pearce*, would be followed in a similar case, and thus conclude a question of much interest and importance.

THE IRISH BAR.

The writer of this article happened to meet, a short time since, an intelligent man who had recently resided in Dublin, and who, although not of the legal profession, seemed to be well informed, for a layman, in regard to the lawyers of that city. Perhaps the readers of the Law Reporter may be interested in the information derived from him, from which this sketch is chiefly composed.

It will be remembered by the legal student that the courts in Dublin are all, with the exception of the magistrates' courts, held in the Hall of the Four Courts, so called, which has been so graphically described in Mr. Charles Phillips' Recollections of John Philpot Curran, that it must be daguerreotyped upon the mind of every lawyer who has read that charming book. The title of

barrister is unknown at the Irish Bar, "counsellor" being used instead. As a class, the Irish counsellors are exceedingly gentlemanlike, and wear the dress and *address* of gentlemen. They live in the best style of the metropolis, and not unfrequently amass large fortunes from successful labors at the bar; they cultivate literature with a becoming zeal, and notwithstanding their laborious mode of life, are frequently men of the world, and given to the hilarity and mirth of their race; and not always, it must be added, free from its vices and excesses. The gentry, quite often, go to the bar for the sake of being reputed gentlemen, but generally, unless they have solid ability to advance them, are briefless and outstripped by those urged to toil by ambition or necessity. There is a great deal of professional feeling among Irish counsellors. If one of their number does an unprofessional thing, the whole bar resent it; if one is insulted by a judge, it is not uncommon for the bar to take it as an insult to themselves. The Irish counsellor looks upon his profession as the vocation of his life and the source of his fame and wealth, and not as a mere stepping-stone to political place and social or public advancement; and though they not unfrequently enter the political arena, they generally follow it as subordinate to their favorite pursuits. There is much boldness and intrepidity among them, as has been frequently witnessed in the many state trials of late years. It is rare that the first lawyers refuse their aid to the objects of state persecution, though they are sure to be thus retarded in professional advancement; and a client high or low, is seldom deserted or betrayed by an Irish lawyer. About fifteen or twenty counsellors monopolize the bulk of the business of the Four Courts, such as McDonough, Fitzgibbon, Whiteside, Butt, O'Hare, Mr. Herrin, Sir Thomas Staples, Sir Coleman O'Laughlin, Queen's Counsel, and Mr. Fitzgerald. The latter is a young man of about twenty-eight or thirty, the most rising of the young men at the bar, and at his early age engaged in the heaviest causes.

Counsellor Curran, a relative of the great John Philpot Curran, about fifty-five years of age, has an extensive, though not the heaviest business. He is an orator, and a sound lawyer. Counsellor Armstrong is about thirty-five; he is Queen's Counsel, and is described as the best looking man at the bar, about six feet in height, with rosy cheeks and clear complexion, and pronounced an able lawyer. As

a junior counsel, Counsellor Coffey, about twenty-five years of age, has a very good name. He was leading counsel for the Catholics in the Six Mile Bridge case, and obtained great credit for his clever and able management. Mr. Staples, of the northern circuit, residing in Belfast, is said to be a very strong lawyer, and not unfrequently comes to Dublin upon a special retainer. Counsellor Corbillis, nearly fifty years of age, Queen's Counsel, is much engaged for the crown in important cases. Counsellor Hayes, Queen's Counsel, is from thirty-five to forty years of age, of fair complexion, very expressive eyes, and is engaged in a general practice. Counsellor Smiley, Queen's Counsel, is also much engaged for the crown; a man of about fifty years, and of respectable practice. Mr. Brewster is of about seventy years of age, but still practices at the bar. He was solicitor general before Mr. Keogh. Mr. Herrin is a diminutive man, of sharp features and pale face, and has a valuable reputation. Fitzgibbon is a tall and slightly built man. Father Holmes, the patriarch of the bar, is now between eighty and ninety years of age, and was once in great practice; he is now somewhat superannuated, and is represented to us (though from other quarters we have heard this contradicted) to have failed to meet the expectations entertained of him, in the defence of Mitchell in 1848. Napier is described as a great black-letter lawyer, and famous as a chamber counsel, but he seldom appears in court. Keogh, Solicitor General, but about thirty years of age, is said to be the most accomplished speaker, next to Whiteside, at the Irish bar; and Mr. McDonough, one of the counsel for O'Connell, to have the most lucrative and miscellaneous practice at the bar of Dublin. Mr. Butt is a very learned lawyer, and has a large share of business. He is coarse looking, of pale face, with heavy eyebrows, and rather repulsive in his general appearance. He is now a member of Parliament for the borough of Youghal. Counsellor Fitzgerald, already named, a fine looking man only about thirty-one, is also a member for Ennis, and already one of the leading men at the bar. Mr. Whiteside has more reputation out of Ireland than any other advocate of his country; and at home he is highly esteemed as an advocate, but not so much as a lawyer, though in that respect by no means deficient. A gentleman who was present at the trials of O'Brien and Meagher, at Clonmel, in 1848, well describes to us the burning eloquence and the fiery enthusiasm of this great advocate, when, after an

argument of sterling force and closeness, he wound up with the fine peroration reported in Townsend's Modern State Trials, to which we must refer the reader. He also heard Shiel's opening speech in 1844, in the trial of O'Connell, which he rose from a sick bed to deliver. We have read the speech, and his remarks upon it confirm our impressions from the reading. It was a little rhetorical for the occasion, and a little less matter of fact than suited the interests of his clients. Indeed, O'Connell is said to have been a little nettled at it during parts of its delivery, and we have somewhere read that he slyly passed up to Shiel, while speaking, a volume of Carrington & Payne's Reports, as a gentle hint to call him from flowers of speech and political disquisition to the merits and law of the case.[1] This plainly exhibited the different characters of the two men. Shiel coveted the brilliant fame of Curran, rather than the solid and severe greatness of Plunkett and O'Connell. He was not deficient, however, in close thought, learned research, and masculine power, enriched with a brilliancy of imagination and a ripeness of literary culture, to which, probably, neither of them could justly lay claim. This is quite evident from his parliamentary speeches, his popular harangues, and the few and fragmentary forensic performances which have appeared in print. The skilful orator and nice rhetorician are more conspicuous even in the latter, it must be confessed, than the lawyer and logician. Nothing, however, could be more appropriate or artistic than his exordium in the trial of the O'Connells; it was conciliatory, ingratiating, and withal short and to the point. The body of the argument was close and correct in its reasoning. He was obliged to be *general*, lest he should trench on those to follow, and he was, beside, to open the facts rather than the law. Hence, not much

[1] Mr. McCullagh tells us in his Life of Shiel, just published, that in the O'Connell case in 1843, the great orator recited his speech to the reporters beforehand. He says: "Far greater was their surprise when he undertook to speak it for them by anticipation. With his hands wrapped in flannel he kept moving slowly up and down the room, repeating with great rapidity and occasionally with his wonted vehemence of intonation, passage after passage, and paragraph after paragraph; then, wearied with the strange and irksome effort, he would lay himself down upon the sofa, and after a short pause recommence his expostulation with the jury, his allusions to the Bench, and his sarcastic apostrophes to the counsel for the crown. On he went, with but brief interruptions and few pauses to correct or alter, until the whole was finished, and had been accurately noted down. Written out with care, it was sent to the printer, and at the moment when he rose to speak in court, printed copies were in the hands of those who had faithfully rendered his ideas previously. As he proceeded, they were thus enabled to mark easily and rapidly any slight variation of phraseology; but these for the most part were so few and trivial as to cause little delay in the correction of the proofs."

legal learning was to be expected. The peroration did full justice to the rest; it was bold, sensible, pathetic, and said to have been spoken with the fervor of Kean's most impetuous acting. How must the jury and his audience have been overwhelmed by his closing words, beginning, "You may deprive him of liberty," &c. Shiel was more an orator than a lawyer; he was too successful as a literary and public man, to brook the toil and drudgery of legal discipline and study, and consequently never came to great practice; he was, however, a brilliant advocate, and that he principally coveted. He was a noble ornament to the bar of his country as well as to the imperial Senate. If he had done nothing to illustrate and immortalize that bar but publish his graphic and truthful "Sketches" of its leaders, his name would be inseparably linked with its history.

Shiel's country residence was at Long Orchard, near Templemoore, in Tipperary, where he lived, we are now told, in a style which we should think might well befit the author of Evadne and the Apostate, though we had always understood he was without fortune.

But we must close these hasty sketches. The gentleman whom we have mentioned thinks the general impression in Ireland accords with his own, in setting O'Connell as a lawyer head and shoulders above all other recent leaders of the Irish bar, both in legal learning and in the arts of the advocate. He was profoundly read, of strong natural powers, an able tactician, a wise counsellor, a safe manager, a shrewd and crafty examiner, a courageous, and withal, an honest lawyer.

Curran, though a surpassingly eloquent man and a most consummate *nisi prius* lawyer, was deficient in legal learning, and had no taste for the heavy studies of the profession.

Yelverton, Ponsonby, Ball, Plunkett the Irish Demosthenes, and Bush the Irish Cicero, all have passed away, but while a Whiteside, a McDonough, and a Fitzgibbon remain, the Irish bar need never be named with a blush or referred to without just pride by those who are interested in its fame.

Among all the members of the profession, of whatever country, there is a common interest, and should exist a common fraternity; and we hope the American bar may not be found behind those of England and Ireland. Pinkney, and Wirt, and Emmett, and Webster, and Mason, have shed the glory of their great names on the

past. Johnson, Crittenden, O'Connor, and Choate are yet among us; but the advancing steps of time remind us that they are mortal. Where are the rising stars who shall perpetuate the fame of the past, and rival the glory of the present?

LORD ELLENBOROUGH AND LORD TENTERDEN.[1]

[A sketch communicated by an eye-witness of note.]

I ATTENDED the Court of King's Bench as a barrister between seven and eight years of the period in which Lord Ellenborough held the office of Chief Justice, and during the whole time of Lord Tenterden's presiding in that court; besides which I had frequently been in the King's Bench while a student, Lord Ellenborough being then Chief Justice. As my attendance was very regular during the far greater part of the time in question, both in banc and at *Nisi Prius*, and as both the Chief Justices often went the Home Circuit, to which I belonged, I had ample opportunities of forming an opinion of their merits and defects in their high office. With respect to Lord Ellenborough, I am not aware of my having been biassed by any predisposition which could prevent my forming a fair, impartial judgment. I cannot say so much as to Lord Tenterden, as I thought his demeanor to the judges when at the bar much too submissive, and not consistent with the independent feeling which should be a characteristic of a British advocate. Both the Chief Justices enjoyed the advantage of a university education. Lord Ellenborough took a high degree as a wrangler at Cambridge; and Lord Tenterden was for a considerable time a resident fellow, and, I believe, a tutor at Oxford. Their mental characters differed widely. Lord Ellenborough had more vigor, grasp, and comprehension of mind, while Lord Tenterden possessed more clearness and exactness, and a sounder judgment. Lord Ellenborough's judicial decisions were marked by great force of expression, and by aptness of illustration, enlivened by as much wit as could be properly introduced into a judgment from the bench, and not unfrequently considerably more. But with all these merits his judicial style was essentially vicious. He indulged in a continual

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[1] From the London Law Magazine, May, 1854.

succession of epigrammatic turns, metaphorical expressions, and displays of strong but somewhat coarse wit, much more fitted to excite admiration of the talents of the speaker, than respect for his qualities as a judge. Much, however, may be said in his praise as a judge. Though not, I think, in the very first class of lawyers, his legal attainments were very considerable. He possessed independence of mind and decision of character in the highest degree, and these qualities supplied in a considerable measure the place of calmness and dignity, in which he was lamentably deficient. Though rather slow of apprehension, his strong hold of a subject when he understood it, and his unhesitating conviction, enabled him to despatch business more rapidly than the far greater part of the judges on the bench. He made a considerable advance in the commercial law, and settled more important points of evidence than any, not to say all, the other judges of my time. In political prosecutions he displayed neither the impartiality nor the temper which should adorn the bench; indeed, his conduct on those occasions was sometimes such as to excite the indignation of every honest mind. He seemed to me much too fond of sending causes to reference. His manners to the bar and to witnesses were frequently very offensive. On the whole, he was a man to admire, not greatly to esteem or respect, and not at all to love.

Lord Tenterden's character as a lawyer was of the highest. In knowledge of special pleading and of all that belongs to the proceedings of the court and of the commercial law he was, I think, inferior to none. In the learning of real property law Holroyd was his superior. Lord Tenterden had very great practice at the bar, but did not attain the rank of king's counsel, and he very rarely led a cause at *Nisi Prius*. This circumstance, probably, in the earlier period of his sitting on the bench, prevented his relying so fully on himself as his great abilities would have warranted; and he was thought to be too much influenced by Scarlett, who was then the principal leader of the court. This fault, however, can only be justly imputed to the early part of his career. When a puisne judge, he seemed in State prosecutions to lean unfairly against the defendants, but I never observed such conduct after he became Chief Justice. Lord Tenterden's person and manners had nothing to recommend him; and he was subject to infirmities of temper. Having thus mentioned his

faults, I proceed to his merits. It has been already said that he was a most learned lawyer, and I now add that his learning was ready, and applied with unvarying clearness and correctness to the matter in hand. He went both in law and in fact directly to the point, wasting no time in wandering into extraneous matters, and preventing, as far as he could, the counsel from so doing. He is said to have been an enemy to eloquence. If by eloquence we are to understand talking cleverly and persuasively on subjects unconnected with the cause before the court, the charge must be admitted, but I do not recollect that he ever checked an advocate in stating any thing which tended to support or to illustrate his cause. He sustained the chief part in banc with propriety and consistency, and was eminently successful in directing the attention of the jury to the points for their consideration, and to the different portions of the evidence as applicable to those points. He was, with the exceptions above mentioned, which applied to the early part of his career only, a model of strict impartiality. He gave his full attention to all cases, great and small; and I cannot call to mind a single instance in which he evinced a disposition to save himself trouble by persuading the counsel to refer causes to arbitration. The business of the court was heavier during the period of his presiding in it, than it had ever been before, or probably ever will be again. From the very severe labors of his office he never shrank; and, I believe, it cannot be doubted that they shortened his life. His judgments were delivered in well-selected and well-arranged terms, "right words in right places." He never rose to eloquence, but his style was remarkable for neatness and purity, and was never disfigured by bad taste or by glaring solecisms. He was assisted by very able puisne judges. I fully believe that such a quantity of important business as was disposed of, to the advantage of the suitors in the King's Bench, during the time Lord Tenterden presided there, has never engaged the attention of any court whatever in a like period of time.

Lord Ellenborough made a considerable, though not a great figure in the House of Commons when Attorney-General, and in the House of Lords when Chief Justice. While holding that office he was (most unconstitutionally) made a cabinet minister. Lord Tenterden had no political weight in the House of Lords. They were both the introducers of laws which have operated beneficially.

Recent American Decisions.

Circuit Court of the United States for the District of Massachusetts. October Term, 1854.

UNITED STATES *v.* MARTIN STOWELL.

Indictment for obstructing an U. S. Officer — Necessary Averments — U. S. Commissioners — Jurors in U. S. Courts — Power of Prosecuting Officer to enter a nolle prosequi.

It is within the discretion of the court to entertain a motion to quash an indictment or to hold the defendant to plead in abatement or demur.

An indictment under the 22d section of the statute of the United States, of 1790, ch. 9, (1 U. S. Stat. at Large, 117,) must show by proper averments that the process was legal.

A commissioner empowered to issue a warrant under the statute of the United States of Sept. 18, 1850, (the Fugitive Slave Law, 9 U. S. Statutes at Large, 462,) must be such a commissioner as is particularly described in that act, and consequently an averment in an indictment for resisting such a warrant, that it was issued by a commissioner of the Circuit Court of the United States, is not sufficient.

An averment that a warrant was duly issued, is insufficient; the facts constituting the due issue must be set forth.

The want of an averment of the facts showing that the commissioner was authorized to issue the warrant, cannot be aided by referring to the records of this court.

That part of the 29th section of the Judiciary Act of the United States, (St. 1789, ch. 20, 1 U. S. Statutes at Large, 83,) which provides that jurors shall be drawn from such parts of the district as the court shall direct, is not repealed by statute 1840, July 20, (5 U. S. Statutes at Large, 394,) and is still in force.

The United States prosecuting officer has power at any time before a jury is empanelled to enter a *nolle prosequi*.

THIS was a motion to quash an indictment against Martin Stowell, for obstructing the U. S. marshal in the service of legal process. The obstruction complained of occurred during the proceedings for the rendition of Anthony Burns, in the year 1854. The substance of the indictment and the questions involved in the case, appear in the opinion of the court.

CURTIS, J. — The grand jury at the present term returned into court an indictment against Martin Stowell for obstructing the marshal of this district in serving legal process. The indictment is framed under the twenty-second section of the act of April 30, 1790.

The accused having been arraigned, submitted, through his counsel, a motion to quash the indictment. It is within

the discretion of the court to refuse to entertain such a motion, and put the party to plead in abatement, or to demur, in order to raise questions affecting the regularity of the finding of the indictment, or its formal or substantial sufficiency. In this case, the court being satisfied, on the presentation of the motion, and looking into the indictment, that some of the causes assigned therein were proper to be discussed and decided in this form of proceeding, have, for the sake of convenience, allowed the counsel to present their views on all the questions, which, in their apprehension, it was proper to make, not intending, however, to depart from what we consider to be a sound rule, that questions admitting of doubt, and involving such difficulty as to require a protracted and elaborate examination, should not be decided in this form of proceeding, especially when the motion is not made till the jurors and witnesses are in attendance for the trial. Having given to some of the questions raised that consideration which we have found necessary to a decision, I will now state the opinion of the court thereon.

The indictment contains five counts. The first is the most full and particular, and an examination of that will render any extended observations on the others unnecessary.

This count alleges, in substance, that the defendant knowingly and willingly did obstruct, resist, and oppose the marshal of this district in serving and attempting to serve a certain warrant and order which are set out in the count. The clause of the 22d section of the act of 1790, on which this indictment depends, makes it an offence knowingly and wilfully to obstruct, resist, or oppose any officer of the United States in serving, or attempting to serve, or execute, any legal process whatsoever.

To constitute an offence under this law, therefore, the obstruction must have been of legal process; and whatever may have been the form or purpose of the process, it is not legal process, within the meaning of this act, unless it emanated from, and was issued by some tribunal, judge, or magistrate authorized by the laws of the United States to issue such process.

It is clear also, that the indictment must show, by proper averments, that the process was legal, not only in form and purpose, but as emanating from some court or officer empowered by law to issue such process.

What particular averments are necessary to show this

authority to issue the process alleged to be obstructed, depends upon the character of the tribunal, or officer, from whom it came. If, as in this case, the officer who granted the process had by law only a limited and special authority, dependent for its existence upon particular facts, every fact necessary to the existence of that authority must either be averred in the indictment, or appear on the face of the process set out therein. Whether it be sufficient that some of the facts necessary to the existence of power to issue the process, where the jurisdiction is special and limited, appear upon the face of the process itself set out in the indictment, but are not averred in the indictment to be true, so as to be traversed and put in issue by a plea of not guilty, it is not necessary in this case to decide. See *Wise* v. *Withers*, 3 Cranch, 331; *Elliott et al.* v. *Piersol*, 1 Pet. 340; *Allen* v. *Gray*, 11 Conn. 95; *Savacool* v. *Boughton*, 5 Wend. 170, which contains an elaborate review of the cases; and *People* v. *Warren*, 5 Hill, 440; 1 Russ on Crimes, 511; Foster, 311, 312; 1 Hale's P. C. 460.

It will be seen, when we come to examine the indictment, that the defect, which we think exists in the averments, to show authority to issue the warrant, is not aided, so far as the act of 1790 is concerned, by any thing on the face of the warrant itself.

The first count alleges that "heretofore, to wit, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and fifty-four, a certain warrant and legal process, directed to the marshal of the said district of Massachusetts, or either of his deputies, was duly issued under the hand and seal of Edward G. Loring, Esquire, who was then and there a commissioner of the Circuit Court of the United States, for said district, which said warrant and legal process was duly delivered to Watson Freeman, Esquire, who was then and there an officer of the United States, to wit, marshal of the United States, for the said district of Massachusetts, at Boston, in the district aforesaid, on the said twenty-fourth day of May, in the year aforesaid, and was of the purport and effect following, that is to say:

UNITED STATES OF AMERICA.

MASSACHUSETTS DISTRICT, ss.

To the Marshal of our District of Massachusetts or either of his Deputies, Greeting:

In the name of the President of the United States of America, you are hereby commanded forthwith to apprehend Anthony Burns, a negro man,

alleged now to be in your district, charged with being a fugitive from labor, and with having escaped from service in the State of Virginia, if he may be found in your precinct, and have him forthwith before me, Edward G. Loring, one of the commissioners of the Circuit Court of the United States for the said district, then and there to answer to the complaint of Charles F. Suttle, of Alexandria, in the said State of Virginia, merchant, alleging under oath that the said Anthony Burns, on the twenty-fourth day of March last, did, and for a long time prior thereto had owed service and labor to him the said Suttle, in the said State of Virginia, under the laws thereof, and that, while held to service there by the said Suttle, the said Burns escaped from the said State of Virginia into the said State of Massachusetts; and that said Burns still owes service and labor to said Suttle in the said State of Virginia, and praying that said Burns may be restored to him, said Suttle, in said State of Virginia, and that such further proceedings may then and there be had in the premises as are by law in such cases provided.

Hereof fail not, and make due return of this writ, with your doings thereon, before me.

Witness my hand and seal at Boston, aforesaid, this twenty-fourth day of May, in the year one thousand eight hundred and fifty-four.

EDWARD G. LORING.

Commissioner. [L. S.]"

These are the only parts of the first count material to the present inquiry, which is, not whether it could be proved on the trial that Mr. Loring had authority to issue this warrant, but whether these averments are sufficient, in point of law, to show to the court that he had that authority.

The first section of the act of Congress of September 18, 1850, taken in connection with the sixth section of the same act, confers power to issue warrants to arrest fugitives from service upon "the persons who have been, or may hereafter be appointed commissioners, in virtue of any act of Congress, by the Circuit Courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace or other magistrate of any of the United States may exercise, in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same, under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An Act to Establish the Judicial Courts of the United States."

It appears, then, that to have authority to issue a warrant under this act of 1850, the person issuing it must not only be a commissioner appointed by a Circuit Court of the United States, but a commissioner thus appointed on whom have been conferred the powers respecting the arrest, imprisonment, and bail of offenders, which were con-

ferred on justices of the peace by the thirty-third section of the act of 1789, 1 U. S. Statutes at Large, 91. That is, he must be *such* a commissioner as is particularly described by the act of 1850.

Does the averment, that the person who issued this warrant was "a commissioner of the Circuit Court of the United States for said district," amount, in legal intendment, to an averment that he was such a commissioner as is particularly described in the act of 1850?

If every person who is a commissioner of the Circuit Court, *ex officio*, possesses, by law, the powers as to arresting, imprisoning, and bailing offenders, granted to justices of the peace by the act of 1789, then it might be intended by the court that this commissioner had those powers, and consequently that he was one of those commissioners upon whom the act of 1850 conferred the power to grant such a warrant. But, on the other hand, if there may be commissioners appointed by the Circuit Court, who do not possess those powers, then an averment that a person was a commissioner appointed by this court, does not amount to an averment that he was *such* a commissioner as is described by the act of 1850, and therein empowered to issue warrants of this kind.

It was argued by the defendant's counsel that this court issues commissions to take depositions in particular cases, and that the persons thus empowered are commissioners appointed by the Circuit Court. We feel some doubt whether persons acting under a *dedimus potestatem* in a particular case, are so far known to the laws of the United States as commissioners appointed by the Circuit Court, that we could say they might fairly, and would naturally, be included under those terms. But there is a class of commissioners appointed by the Circuit Court not adverted to by the counsel, who are known to the laws of the United States as commissioners, and who do not *ex officio* possess the powers to arrest, imprison, and bail offenders against the laws of the United States.

By the act of Congress of August 12, 1848, § 1, 9 U. S. Statutes at Large, 302, passed to give effect to stipulations in treaties with foreign governments, for the extradition of persons charged with certain crimes, power to arrest and hold for extradition, is conferred, amongst others, upon "commissioners authorized so to do by any of the courts of the United States." We think it clear that commissioners appointed for this purpose under this act, would

not possess, *ex officio*, the powers to arrest, imprison, and bail offenders against the laws of the United States. It is true that it seems to have been the design of Congress, when it has from time to time conferred new powers upon commissioners appointed by the Circuit Courts of the United States, to confer them upon that class of commissioners who were originally authorized to be appointed by the act of February 20, 1812, 2 U. S. Statutes at Large, 679, to take bail and affidavits in civil causes in the Circuit Courts, and, accordingly, by apt terms, the persons so appointed have been described, in subsequent laws, as those to whom the new authority was intended to be given. Acts of March 1, 1817, 3 Statutes at Large, 350; August 23, 1842, § 1, 5 Statutes at Large, 72; August 8, 1846, 9 Statutes at Large, 516.

In all these instances, as well as in the act of 1850, for the extradition of fugitives from service, the intention of Congress is apparent, to confer power on that class of commissioners who had been or should be appointed to take bail and affidavits, &c. But the act of August 12, 1848, for extradition under treaties, does not confine the powers therein granted to commissioners who had been, or should be appointed to take affidavits and bail, or to arrest, imprison, or bail offenders against the laws of the United States. There is not only the absence of any such description of the commissioners who are to exercise the powers conferred by the act of 1848, but the sixth section provides in terms, that "It shall be lawful for the courts of the United States, or any of them, to authorize *any person or persons* to act as a commissioner under the provisions of this act."

By force of this act, therefore, there may be commissioners appointed by the Circuit Court for this district, to exercise the powers therein conferred, and those only. The averment that the person who issued this warrant was a commissioner appointed by the Circuit Court, would be fully satisfied by proof that he was thus appointed to make extradition under treaties, though he had no other power whatever. And it necessarily follows that this averment does not show to the court that this was *such* a commissioner as had lawful power to issue this warrant, and consequently the indictment does not show that the warrant was legal process, because it does not show that it proceeded from one having lawful authority to issue it.

We have been referred to a precedent of an indictment

for resisting an officer of the United States in the service of legal process, found in Wharton's Precedents, 567. That process issued from a District Court of the United States, a court of record, and not technically an inferior court. All its jurisdiction and powers are matter of law, to be judicially noticed. The distinction between such a court and a magistrate having only a special authority, is settled. In favor of the jurisdiction of the latter, the law makes no intendment. 1 Saund. 70, n. 3; 1 Ch. Pl. 306; *Sackett* v. *Andross*, 5 Hill, 330.

These principles of criminal pleading are so well settled, and their applicability to this case is so clear, that no authority need be adverted to. But the case of *The King* v. *Everett*, 8 B. & C. 114, is in point. That was an indictment for unlawfully soliciting one Hooper, a person employed in the service of the customs, to omit to make a seizure. The law did not make it the duty of all persons employed in the service of the customs or confer on all such persons the power to make seizures, but only on certain officers of the customs, and persons empowered for that purpose by the commissioners of customs. The indictment alleged that Hooper was a person employed in the service of the customs, and that it was his duty in such employment to make a certain seizure. The defendant having been convicted, moved, in arrest of judgment, that the indictment did not show that Hooper could by law make a seizure. The court held the objection fatal; that it was not enough to aver it was the duty of Hooper to make the seizure; that the facts from which that duty arose must be stated; that as all persons in the service of the customs had not this power, and as no other fact besides his being in that service was alleged, the judgment must be arrested.

In the case at bar, as in that case, only certain persons possess the power in question. It is not shown that Mr. Loring was one of those persons; and the allegation that the warrant was duly issued, does not help the indictment. Whether duly or unduly issued is a question of law, and the facts to constitute a due issue must be pleaded, that the court may be able to decide whether the issue of the warrant was duly or unduly made; just as in the case in 8 B. & C., it was held not sufficient to aver that it was the duty of Hooper to make seizures, but the facts from which that duty arose should be averred.

It may be suggested that inasmuch as the appointment

of Mr. Loring emanated from this court, and is a matter of record here, the court may take judicial notice of the fact that he was authorized to act as a commissioner, in arresting, imprisoning, and bailing offenders against the laws of the United States, and so that he was such a commissioner as described in the act of 1850. We suppose it to be true that Mr. Loring was such a commissioner, and that his authority could be proved by producing the record of his appointment; but this cannot affect the decision of the question now under consideration. An indictment must contain every averment necessary to show that an offence has been committed; and the want of any such averment cannot be supplied by showing that the fact thus omitted appears on other records of the court. Suppose a conviction upon an indictment thus defective were to be carried by writ of error to another court, the conviction must be reversed there, because the Court of Errors could have no judicial knowledge of the omitted fact. Yet, if erroneous in the court above, it would be equally erroneous in the court below. The indictment must be sufficient of itself, when aided by those intendments which the law requires to be made from what appears therein; and it cannot be made good by merely extraneous matter, though that may be matter of record.

It is true this objection to the indictment is technical, and there does not seem to be reason to suppose that, in this case, the absence of this averment in the indictment can be of any practical consequence to the defendant, so far as respects the substantial merits of his case. But the rules of law which prescribe the essentials of a good indictment, are as binding on the court as the act of Congress under which the indictment is framed, and the defendant has the same right to call on the court to give complete effect to the former, as the government has to require the enforcement of the latter.

For these reasons we are of opinion that it does not appear by this first count that the warrant set out therein was legal process.

It has been made a question at the argument, whether the indictment shows that Burns was held, at the time of the alleged obstruction, under the original warrant, or under the order made by the commissioner on the adjournment, or under both. But as it is not shown by the count that Mr. Loring was such a commissioner as was empowered by the act of 1850 to hear and determine this subject-

matter, it necessarily follows that it is not material in this case how that question should be decided.

Of the other counts in the indictment, it is necessary to say only that neither of them is as full and specific as the first, and neither of them contains enough to show that the process alleged to be obstructed was legal. One of them seems to have been framed in conformity with precedents under the laws of the States, for resisting, opposing or assaulting an officer of the law while in the performance of his duty. But the act of 1790 requires that the officer should be resisted, obstructed or opposed in serving or attempting to serve, or execute, some order or rule of a court, or some legal process. State officers, especially those who are guardians of the public peace, have many official duties to perform without process. They are protected by the laws under whose authority they act in discharging their duties; and offences may be committed against them, and consequently persons may be indicted therefor without alleging or proving that any legal process existed. So under the 8th section of the act of 1850, the offence of resisting or obstructing the claimant, or any one lawfully assisting him, either with or without process, is described; and an indictment under that section need not show that any legal process existed. But under the act of 1790, the resistance or obstruction of some legal process or precept is the very gist of the offence, and therefore the indictment must show what the process or precept was, and must set forth such facts as, if true, would make the process legal.

Our opinion is, that as neither of the counts in this indictment describes, by sufficient averments, any offence against the act of 1790, under which alone the government claims that the indictment can be supported, it must be quashed.

This renders it unnecessary to decide the other questions which have been argued, and, with one exception we desire to be understood as neither expressing nor intimating any opinion thereon. There is, however, one question which has been argued by one of the defendant's counsel, which so far affects both the past and present practice of the court that it would be unjust to the suitors to allow it to be supposed that any doubt can be raised concerning it.

At the October term, 1832, this court adopted a roster of towns and cities, from which jurors to serve in the Circuit Court were to be returned. This roster contained ten dis-

tinct tables of towns and cities, in which the name of the town or city was set down, and opposite each was placed the number of grand and traverse jurors who were to be drawn therefrom. One of these tables was to be used for each term, taking the tables in rotation as they stand on the roster. This practice has been followed, as we understand, from the adoption of the order to the present time.

The roster embraces a large part of the maritime towns and cities of the State, and many others, whose local situation renders access to the place where the court is required by law to be held, comparatively cheap and easy.

It excluded the more remote interior towns of the State altogether. In forming these lists of towns, this court was undoubtedly governed by that clause of the 29th section of the act of Congress of September 24, 1789, (1 U. S. Stat. at Large, 88,) which provided that jurors "shall be returned, as there shall be occasion for them, *from such parts of the district* from time to time, as the court shall direct, so as shall be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services." In the discharge of the duty thus made incumbent on the court by this act, our predecessors seem to have considered, as we have done, that inasmuch as a large part of both the civil and criminal cases tried here are of a commercial or maritime character, a jury drawn from commercial and maritime towns would be most conversant with such transactions generally, and best able to bring to their investigation that experience which would enable them most satisfactorily to decide such controversies; following, in this respect, as nearly as the circumstances will permit, the well known maxim of the common law, recognized both in the constitution and laws of the United States, that a jury should come from the vicinage and also, that in drawing jurors from those cities and towns not remote from the place where the court is held, they would obey the other requirement of the statute, to avoid unnecessary expense. And, further, that the population of the towns and cities embraced in the roster was so great, and the number of the jurors and the length of their attendance necessary to do the business of the court, comparatively so small, that the inhabitants of those towns and cities would not be unduly burthened by the service.

It is now insisted, however, that it has been discovered by one of the defendant's counsel, that since the year 1849

this court has been pursuing an illegal practice by using this roster; that a jury summoned in pursuance of it is not returned according to the laws of the United States, and, consequently, that not only this indictment, but all presentments and verdicts here made or rendered, for a period of upwards of fourteen years, have been illegal and invalid.

The supposed ground for attributing this very grave mistake to the court is, that by an act of Congress of July 20, 1840, 5 U. S. Stat. at Large, 394, the clause of the 29th section of the Judiciary Act, under which the court has acted, was repealed. To ascertain whether this be so, it is necessary to examine the two statutes. The clause in the Judiciary Act of 1789, is as follows:

"And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively, according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State, and shall be returned as there shall be occasion for them, from such parts of the district from time to time as the court shall direct, so as shall be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of any part of the district with such services."

This clause provides for three things:

1. The mode of designating jurors, as by ballot, lot, or otherwise.

2. The qualifications of jurors, as age, citizenship, residence, &c.

3. The locality from which jurors, so designated and so qualified, shall be drawn.

The first two are required to be governed, as nearly as may be, by the laws of the States, as they existed on the 24th day of September, 1789. The third is referred to the discretion of the court, to be regulated by the considerations as to impartiality, expense and undue burthen of the service, which are pointed out in the act.

The third particular is that now in question, and the act of July 20, 1840, which is relied on as repealing this third provision, is as follows:

"That jurors to serve in the courts of the United States, in each State respectively, shall have the like qualifications, and be entitled to the like exemptions as jurors of the highest court of law of such State now have and are entitled to, and shall hereafter from time to time have and be entitled to; and shall be designated by ballot, lot or otherwise, according to the mode of forming such juries now practised and hereafter to be practised therein, in so far as such mode may be practicable by the courts of

the United States, or the officers thereof; and for this purpose the said courts shall have power to make all necessary rules and regulations for conforming the designation and empanelling of juries in substance to the laws and usages now in force in such States; and further, shall have power, by rule or order, from time to time, to conform the same to any change in these respects which may be hereafter adopted by the legislatures of the respective States for the State courts."

It is obvious, on even a cursory reading of this act of 1840, that it does not expressly repeal the former law, or any part of it; and also, that it contains nothing touching the subject of the locality from which the jurors are to be drawn. It applies solely to the first two particulars embraced in the former law, viz., the mode of designating jurors, and their qualifications. It changes the law as to the mode of designation, and the qualifications of jurors in this: that whereas by the act of 1789, the laws of the States existing in September, 1789, were the only rules respecting qualifications and mode of designation, this act of 1840 adopts as rules of qualification and mode of designation, the law of the States which existed on the 20th day of July, 1840, and also any State laws which might thereafter be passed touching those subjects.

The practical necessity for this change in the law is very apparent. The act of 1789 having reference only to the State laws then in existence, there were no rules on this subject in the new States, by force of any positive law. The necessity is met by the act of 1840, and there it stops. Neither in terms nor by any implication has it repealed the residue of the law of 1789, which confers a discretionary power on the court respecting the part of the district from which the jurors are to be drawn.

It is a well settled and familiar rule that the law *does not* favor repeals by implication, and a subsequent statute repeals a former statute by implication, only so far as the one is directly and necessarily repugnant to, or inconsistent with, the other. There is no repugnancy between these two acts as respects the locality from which jurors are to be drawn. Both may stand together without conflict or inconsistency.

In the same 29th section of the act of 1789, occurs another provision respecting the locality from which jurors are to be drawn. It is as follows:—

"In cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence."

Certainly the act of 1840 has not repealed this clause. Yet there is as good ground for so arguing, as for the assertion that it has repealed the other direction contained in the same section respecting the locality from which jurors shall be summoned. Our clear opinion is, that so much of the act of 1789 as requires this court to determine from what parts of the district jurors are to be drawn, is still in force, and consequently this objection is without foundation.

Upon another objection to the indictment, grounded on the fact that the venire for the grand jury was issued to, and returned by, the marshal, and that he was not an indifferent person within the meaning of the 29th section of the act of 1789, and that for this cause the court should, on motion, quash the indictment, after it had been received and filed, and the defendant had been put to plead thereto, we have formed no opinion. If it had been alleged that the marshal, or any other person concerned in returning the grand jury, had been guilty of any unfair or improper conduct in forming the panel, we should have deemed it our duty carefully and promptly to investigate the charge. This would have been due to the purity of the administration of the law, which the court should most sedulously guard.

But the objection has been rested merely upon the legal ground, that however fair in point of fact may have been the conduct of the marshal, he was not legally qualified to return this grand jury. As the question, in the mode in which it is presented, is attended with difficulty, and as it is not necessary to a determination of the motion to quash the indictment, and as it does not affect the general practice of the court, we have thought it proper to reserve our decision thereon until it shall need to be decided, and until it shall come before us unattended by the difficulties which arise from the time and mode of raising it.

The result is, that the motion to quash the indictment for the cause that it does not appear therein that any offence was committed, must be allowed.

Judge Sprague remarked that he concurred in the opinion delivered by Judge Curtis. There were, he said, several kinds of commissioners, some of which have power to issue warrants for the arrest of persons escaping from service or labor, and others have not. This indictment does not show that this commissioner is one of the former class, and therefore it does not set forth that the warrant specified was

issued by a competent authority. Several other questions have been presented, which would deserve very grave consideration, but it was not then necessary to decide them.

Mr. John P. Hale suggested that the same order be issued in the cases of certain other defendants indicted for the same offence, whose counsel had argued to the court as in the case of Martin Stowell.

Mr. Hallett, the district attorney, objected, and said he would enter a *nolle prosequi* in each of the other cases. He insisted on his right to take this course, declaring that Martin Stowell was the only party arraigned, and his case the only one before the court. Whether, under this decision, it would ever hereafter be possible to frame any indictment to meet these cases, he said, would be a matter of future consideration; but at present he only asked the right which belonged to the prosecuting officer, of disposing of the indictments in the other cases.

Mr. C. M. Ellis insisted that justice required that the other cases should be disposed of upon the motions which had really been argued.

After some further remarks, Judge Curtis said the court did not perceive that it can make any difference, now or hereafter, whether an entry be made that the indictment be quashed, or of *nolle prosequi*. The court understood that all the cases had been heard upon the motion, but at the same time, as a general rule, the prosecuting officer has power at any time before a jury is empanelled, to enter a *nolle prosequi*. The court will not restrain this power, if he chooses to exercise it, in these cases. However, the motion must be made at this time, so that the court may see that the same rights are secured to the defendants as if their cases were included in this order.

William Holbrook *v.* John Black.

Answer, Defendant's Right to make under Oath.

A defendant in chancery has a right to make his answer under oath although an answer under oath is waived by the bill.

In this case, the plaintiff filed his bill in the usual form, requiring an answer from the defendant under oath. Afterwards, and before the filing of the answer, the plain-

tiff's counsel moved that the defendant be ordered to make his answer without oath. After argument, a decision, substantially as follows, was given by

SPRAGUE, J. — This question is one which must be determined by precedent, and the usual course of chancery proceedings. Some of the text books seem to favor the idea that the motion should be granted; but their statements are carelessly and loosely made; and, on examination, they are not found to be supported by the authority of decided cases. *Codner* v. *Hersey*, 18 Vesey, 468, and *Curling* v. *Townsend*, 19 Vesey, 628, are the most important English authorities bearing upon the case. But they go no further than to show that, under certain circumstances, the defendant may have *permission* to file his answer without his oath. The cases of the *Union Bank of Georgetown* v. *Geary*, 5 Peters, 99, and *Patterson* v. *Gaines*, 6 How. 588, contain no direct decisions upon the point under consideration. But the case of *Pierpont* v. *Fowle*, cited for the defendant, which was heard before Mr. Justice Story, in this district, though not reported, is directly in point. It seems, in that case, Judge Story decided that it was the defendant's right to make his answer under oath, although the plaintiff's bill waived the oath; and the plaintiff was in that case, directed to amend his bill in order to make it conform to the common practice in which the bill requires the defendant to make answer under oath. Moreover, the book of precedents contain no form, so far as I have been able to learn, for such an order as is here asked for; — and this is a circumstance of some importance in a matter of practice.

I must therefore regard it as a right of the defendant to make oath to his answer; and the motion must be refused.

R. Choate, and *R. F. Fuller*, for plaintiff; *R. Fletcher* and *C. E. Pike*, for defendant.

District Court of the United States, for the District of Massachusetts.

THE ADMIRAL.

MERCHANT'S STEAM NAVIGATION CO., *Libellants;* EASTERN STEAMBOAT CO., *Claimants.*

Lien in the Admiralty — Effect of Delay to enforce and of Change of Ownership — Notice to Corporation.

A lien in admiralty continues until a reasonable opportunity is given to enforce it.

What is a reasonable time depends on the circumstances of each case.

When a collision occurred October 7, 1852, and a libel *in rem* was filed after more than twenty months, during which time the libellants might have enforced their lien, if any, and after a change of ownership, the court refused to enforce the lien.

Quære, whether it should be enforced if the *res* had not changed owners: and if the delay had operated to the prejudice of its owners.

The knowledge of stockholders in a corporation, the former owners of the corporate property, will not affect the corporation with notice of a lien when there are other stockholders who took stock in ignorance of the claim.

A notice to a stockholder or to a party who afterwards becomes an officer of the corporation is not notice to the corporation.

The fact that a party receiving the notice afterwards becomes an officer in the company will not make it obligatory upon him to give that notice, before received, to the company.

SPRAGUE, J., gave his opinion in this case, from which the facts sufficiently appear, in substance as follows: —

This is a libel filed by the Merchant's Steam Navigation Company — owners of the steamer Eastern State — for damages sustained by that vessel, in a collision with the steamer Admiral.

The collision occurred October 7, 1852, and this libel was filed July 1, 1854, a period of more than twenty months, during all of which time the Admiral was plying twice a week between this port and St. John, and there were agents of the Eastern State here.

The libellants, therefore, have had a period of twenty months to assert their lien and have not done so.

It may be that if third persons had not become interested in the Admiral this libel might be maintained, although I am not prepared to say that I should hold that the lien still remained upon the vessel if there had been no change of ownership. If the boat still remained the property of her former owners it would perhaps be a matter of no concern to them whether they were sued *in personam* or whether the boat was seized. If the delay operated to

prejudice them in any way, I am not certain that the lien ought not to be held to have been lost.

This case differs from the ordinary cases of liens. This is a lien for a tort. Generally liens are sought to be enforced for debts.

At common law liens are lost with the possession of the property. This is not so in admiralty. From the necessities of commerce these liens are upheld without reference to the possession — vessels are frequently away from their owners, and their masters without credit, and unless this extraordinary security was given great loss and inconvenience would often be sustained.

These liens are secret. There is no place where inquiry may be made and their existence and extent be ascertained. The whole tendency of legislation has been that the world should know the incumbrances on property. Such was the object of the act of Congress passed in 1850, requiring the registration of bills of sale and mortgages of vessels. Such is the policy of the law in reference to the title to real estate.

The rule adopted in courts of admiralty, is to allow the continuance of the lien until a reasonable opportunity is given to enforce it. If a party neglects to avail himself of it, third persons are not to be prejudiced by his delay. What is a reasonable time is left by the law to be determined by the circumstances of each case.

In case of a lien for repairs or materials furnished, a proposed purchaser may, perhaps, by inquiry, ascertain the extent of the lien, but in case of a lien for collision, this is impossible. It may be doubtful whether there is any claim, and if there be any, the amount cannot be ascertained.

If a party were allowed to lie by, for such a length of time, and afterwards assert his lien, it would deprive the owner of the opportunity of selling his vessel, or at least cast a shade upon the title, and thus injure the value.

Another difficulty growing out of this delay, is the loss of evidence. It is well known that in cases of collision, there is a great deal of contradictory testimony, that of sailors and others, who are often difficult to be found at the end of so long a period. One party might secure this testimony, and the other could not. One might wait till the witnesses of the other were dispersed, and then file his libel.

It is said that the transfer in this case is colorable. There is no evidence of it. The case must be decided

upon the testimony before me. There is a bill of sale — an acknowledgment of the receipt of the consideration, and a delivery of the vessel, and the bill of sale was duly recorded. This makes a good title to the claimants.

It is said all the former owners of the Admiral were stockholders in the claimants' company, and thus the corporation is affected with knowledge of this lien. It does not appear that they owned in the company in the same proportion as before, and if it did it would make no difference, because there were other stockholders in the company who took stock in ignorance of the claim, and they ought to be protected. The former owners became merely stockholders in the new company, and their knowledge does not affect the corporation with knowledge.

The difficulty is, that as this is a process *in rem*, and the boat the property of the corporation, there is no process to reach the interests of the former owners without affecting the interests of others who purchased innocently.

The boat is now owned by a corporation and not by individuals. The persons owning do not own as before any part or right in the boat, but they own stock in the company.

It is said by the libellants that they gave notice of the claim to the agent of the Admiral here. This notice, (though denied) if given, was given within three days after the collision. But the notice was only of a claim, and not whether the claim would be made *in personam* or *in rem*. But what is of more importance, it was given to the agent of the former owners, and not to the agent of the claimants. And the notice which is stated by a Mr. ———, of Bangor, is not satisfactory. How does he know the notice was given? He does not say he gave it, but that Mr. Clark, the attorney, gave it. He does not say how he knew this notice was given, and I do not consider this proper proof of notice. But if it were given, it was after the purchase of the boat, and then what could the claimants do? They did all they could in sending the vessel within the jurisdiction, and thus gave the libellants an opportunity to assert their lien, and the libellants have not proceeded to assert their claim for all this time.

I doubt if Nichols was the proper party to be notified. He was not the general agent of the corporation. If any notice could avail, it, at least, should have been given to some person who was authorized to receive and act upon it, or whose duty it was to communicate it to the corpora-

tion. A notice to a stockholder or to a party who afterwards becomes an officer of the corporation is not notice to the corporation, because the notice was not given to a party whose duty it was to notify the corporation. The fact, that a party receiving the notice afterwards becomes an officer in the company, will not make it obligatory upon him to give that notice before received to the company.

It is said that another suit was pending between the former owners of the Admiral and the libellants, and that this was notice of the claim, but that libel and suit was between other parties.

It is farther said that it was proper for the libellants to await the issue of that suit before filing this libel, and so avoid litigation. There was a matter of personal convenience to the libellants and for their own protection, and to save themselves expense, but a delay for such purpose must not be allowed to work an injury to others.

For these reasons this libel must be dismissed with costs.

C. P. Curtis, Jr. for the libellants; *Henry C. Hutchins*, for the respondents.

Stratton et al. *v.* Babbage.

New Orleans not a Port of Discharge for free Colored Seamen — Shipping Articles signed under Duress and Protest.

A port where colored seamen are obliged to remain in jail or on board the vessel while she remains in port, is not a port of discharge within the United States, unless at their option.

Consequently they are entitled to their wages under the shipping articles until their arrival at a port where they can be discharged in safety.

Such seamen required in such southern port to sign new shipping articles at a reduced rate of wages, and doing so under protest, will not be bound by such articles, but will be entitled to recover the wages stipulated in the original shipping articles.

This was a libel for seamen's wages on board brig Iddo Kimball, of which the respondent was master.

Sprague, J.— The libellants, who are free colored seamen, joined this vessel at Halifax, Nova Scotia, and signed articles for a voyage thence to Europe, and thence "to a port of discharge in the United States," at the rate of $24 per month. The vessel went to England, and thence to New Orleans. The laws of Louisiana oblige a master of

a vessel bringing free colored seamen to New Orleans, to give bonds in $1000 to take every such seamen out of the State in his vessel, or to see that they go in some other vessel before he sails. While in port, the men must live on board the vessel, or in jail. The master stated the law to the men, and told them they might stay on board and work, and he would allow them the current wages, which were $15 per month, from the day of arrival in New Orleans. The vessel lay some three weeks in New Orleans, and then sailed for Boston. On the day of sailing, the master required the crew to sign articles for the voyage from New Orleans to Boston for $15 per month, including the time they lay in New Orleans. They signed the articles, but under protest.

The question is, whether New Orleans is "a port of discharge" for free colored seamen. Upon reflection, I am of opinion that a port in the slave States, where laws of this description prevail, is not a port of discharge for colored seamen. They cannot be, in any just sense of the term, *discharged* from the vessel. They are not free to go where they please, and to find other voyages. They must be either in jail or on board this vessel, and must go to sea in this vessel, or in such other as the master may find for them. They cannot even leave the vessel without the hazard of being made slaves. The master is under obligations also, being compelled to keep them, at great pecuniary risk, whether he will or no. Neither party is clear of the other. I do not mean to decide that such a port may not be treated as a port of discharge, if the seamen choose so to treat it. If they freely change their vessel, or freely make new terms with the master, I do not mean to say that they may not do so. It is not necessary to pass upon that question. But it cannot be treated as a port of discharge *as against* colored seamen. As New Orleans was not "a port of discharge," as against these men, they were entitled to proceed to Boston in the vessel at the original rate of wages. They did not waive this right freely, or for a valuable consideration, but made the new contract under duress and under protest, and for no consideration.

Decree for the libellants for full wages, to the arrival in Boston, with certain additional wages as compensation for short provisions, and certain deductions for refusal of duty, and for the sickness of a seaman by his own fault.

F. W. Sawyer, for libellants; *R. H. Dana, Jr.*, for respondents.

John Knight *v.* Eben Parsons.

Right of Mackerel Fishermen to be cured at the Expense of the Ship.

Fishermen on mackerel voyages in licensed and enrolled vessels, come so far within the general rule relating to hired seamen as to be entitled to be cured at the ship's expense.

It makes no difference as to the application of this rule, that an account was kept of the catchings of each man, who was to be paid accordingly. The crew are still to be considered as hired, and are not mere joint adventurers.

In this case evidence of a usage that the crews of mackerelmen have not been treated for sickness at the ship's expense, and have not desired to be so, was not allowed to countervail this rule.

This was a suit *in personam*, in the Admiralty. The libellant was a fisherman on board the schooner Avon, of Gloucester, of which the respondent was skipper and part owner. The Avon was enrolled and licensed for the mackerel fishery, and was engaged in mackerel fishing in the Gulf of St. Lawrence. The shipping contract was to the effect that the owners would furnish the provisions, stores, salt, and other outfits, and that the cash proceeds of the catchings should be equally divided — one half to the owners and one half to the skipper and men. The contract did not state how the crew should divide among themselves. It appeared that by agreement between the skipper and the rest of the crew, an account was kept of what each man caught, and they divided according to their actual catchings. The libellant was taken ill on the voyage, went ashore and consulted a physician, and bought medicine. Afterwards, being more ill, he desired to leave the vessel entirely, and he was set ashore at a port on Prince Edward Island. When leaving the vessel he obtained ten dollars of the skipper, for his expenses on shore, telling the skipper that his fish would be sufficient security. He remained awhile ill on the island, and returned to Gloucester. When the vessel arrived he settled his voyage with the owners, taking pay for half the fish he had caught at the time he left the vessel, and allowing a deduction of the ten dollars borrowed, and of the amount paid for medicinal advice and medicines. He made no objection to the settlement, and gave no notice of any claim for compensation for his expenses after he left the vessel. About three months after the settlement, notice of the claim was given by his proctor, and this suit was commenced. The claim was for medicines, board, and medical advice while at Prince Edward's Island, and for the expenses of his return to Gloucester.

A large number of witnesses were examined, all of whom testified that, by a long established usage in Gloucester, mackerel vessels do not carry medicines on the ship's account, but each man furnishes his own, and the uniform rule of settlement, to which no exception had ever been known to exist, was, that each man should bear the expenses of medicines and medical advice, and if a man left the vessel from sickness, he lost the rest of his voyage, and received no compensation for his expenses after leaving the vessel.

SPRAGUE, J. — This case, as presented, raises three questions: First, do fishermen on mackerel voyages, in licensed and enrolled vessels, so far come within the general rule of law relating to hired seamen, as to be entitled to be cured at the ship's expense? Second, if so, does the usage of Gloucester take this case out of the operation of the general rule? Third, do the acts of the libellant, at the time of leaving the vessel, or at the time of the settlement, amount to a remission of his general right?

It is conceded that hired seamen are, as a general rule, entitled to be treated for sickness at the ship's expense, and, if they leave the vessel from necessity, or for their mutual benefit, they are entitled to the reasonable expenses of their cure and return. It is conceded that this rule is extended to whalemen, who receive a lay, or share of the oil taken, but it is contended that this lay is only a mode of fixing compensation, they being in fact but hired seamen, their pay being graduated by the success of the voyage. But I can see no difference in principle between the whalemen and the mackerelmen. As whales must be taken by united efforts, separate accounts cannot be kept, as was done here, and as is usually done in mackerel vessels; but each man is paid according to his supposed capacity as a whaleman, the rates of lays being graduated, and all are paid according to what all catch. In this voyage, the contract with the owners does not require that the crew should divide according to each man's catchings, but gives the skipper and the crew one half, and leaves them to divide as they please, and it is optional with them all, or any two or more of them, to "heave together," as the phrase is, if they please. The owners, in the one species of fishery as well as the other, furnish all the stores, provisions, and outfits, and the crew are paid according to the success of the enterprise. I think this contract is one of *hiring*, and that the crew are hired seamen, in substance, and not, as con-

tended, merely joint adventurers with the owners on common account. It has long been decided that, in the whale fisheries, the crew have no specific property in the oil, but only a right to the proceeds of the oil, and this contract seems to give the owners the right to sell the fish, and the crew have only a pecuniary claim, calculated upon the amount of fish caught.

In construing the recent act of Congress, prohibiting flogging in "vessels of commerce," it has been decided by the court of this circuit, on full deliberation, that it covered vessels engaged in the whale trade. One ground of the decision was, that all the power Congress has under the Constitution to regulate vessels, is derived from the power to "regulate commerce," and it is under this clause alone that it regulates the registry and license of fishing vessels, the payment of bounty to them, and the discipline of men in the whale and cod fisheries.

As to the usage, the evidence is strong to the effect that men have not been treated for sickness, and have not desired to be so at the ship's expense, in mackerel voyages out of the ports of Cape Ann. But I should be slow to set aside a wholesome and well established rule of law, in favor of a local usage, especially when it is so much the interest of the influential people of the place to create such a usage, and those against whom it operates are often ignorant of their rights, or unable to vindicate them.

As to the circumstances of this case, I am inclined to interpret the acts of the libellant as those of a man who was ignorant of his rights. I am equally satisfied that the master and owners of this vessel supposed them to have no such rights, and that they acted in good faith throughout.

Decree for $75, with costs.

An appeal was entered, but the case was subsequently compromised.

C. G. Thomas, for libellant; *R. H. Dana, Jr.*, for the respondents.

District Court of the United States for the District of Massachusetts. April, 1855.

HENRY L. SHEFFIELD *v.* KILBY PAGE.

SAME *v.* JAMES G. FOSTER.

Ship's Articles — Admissibility of Parol Evidence in case of a Written Contract — Wages earned by Mate tortiously discharged on his Return home, not deducted from the Amount decreed against the Owner — Libels against Owner and Master for a tortious discharge — What may be recovered against the Master and not against the Owner.

Where there is a contract in writing purporting on its face to contain the whole agreement relative to its subject-matter, parol evidence is not admissible to prove that part of the contract made by the parties is omitted, if the whole matter is all one contract made at one and the same time.

But when the written contract is incomplete on its face, and tacitly refers to parol evidence, such evidence may be admissible.

And where a mate had signed shipping articles for a voyage from San Francisco to Calcutta, in which no rate of wages was named, parol evidence was admitted to show that his contract was for a voyage from San Francisco to Boston *via* Calcutta for a certain rate of wages per month.

The mate having been discharged at Calcutta, and no situation as mate having been offered to him, came to Boston before the mast, and the court refused to deduct the wages so earned by him.

A libel was brought by him against an owner for his wages to Boston, and one against the master to recover damages for his discharge; but it not appearing that the captain had done any wrong or injury to the mate in discharging him, except that necessarily resulting from a violation of the contract, it was held, he could recover in one suit only, and might recover all he was entitled to on account of such discharge against the owner, and the libel against the captain was dismissed.

THESE two cases were heard together.

The first was a libel against a part owner of the ship Uriel, to recover wages, as first mate, from San Francisco, via Calcutta, to Boston, at $50 per month, from June 20, 1851, to April 26, 1852, — the second, a libel against the master of the Uriel, to recover damages for a wrongful discharge of the libellant at Calcutta.

In June, 1851, the libellant shipped in the Uriel at San Francisco, as first mate, for a voyage, as he alleged, from San Francisco, via Calcutta, to Boston, but, as the respondents contended, only to Calcutta.

On the arrival of the Uriel at Calcutta, the libellant was discharged by Captain Foster, and came home in another vessel, before the mast, receiving for his services in such other vessel the sum of $60. And the libel against the owner was brought to recover his wages up to his arrival at Boston, with certain expenses at Calcutta. The respondents

alleged that the libellant had signed shipping articles for a voyage to Calcutta only, and objected to the admission of parol evidence to show that his contract was for a voyage to Boston. A copy of the articles brought by the captain from San Francisco, and certified by the deputy collector of that port, was produced by them, which did not contain the libellant's name, but another copy was also offered in evidence, subsequently obtained from San Francisco, which did contain his name. Neither copy contained any statement of the rate of wages to be paid to him.

Sprague, J. — Several questions arise in this case. First, were any articles signed by the libellant? Second, if so, for what voyage? And thirdly, if for the voyage alleged by the respondents, can parol evidence be admitted to show that the parties contracted for a voyage to Boston via Calcutta; and what effect shall be given to that evidence? On the whole, I think there is satisfactory evidence that the articles were signed; and I think the articles signed were for a voyage to Calcutta, as claimed by the respondents.

Then, is parol evidence admissible to show a contract for a voyage to Boston? The argument urged is that the articles do not contain the whole contract, and are not inconsistent with evidence of a contract to continue the voyage to Boston after arriving at Calcutta. And there is certainly much plausibility in this view. The cases upon this subject are so numerous and so various that perhaps it is not easy to reconcile all of them, yet the true principle is not difficult of discovery.

A contract distinct from that contained in the writing can of course be proved, but the rule goes to this extent, that nothing can be introduced by parol to change the contract; and if the whole matter is one contract, made at one time, to prove that part was omitted, would affect and be inconsistent with the writing, and parol evidence cannot be admitted for that purpose. When the writing purports on its face to contain the whole agreement, relative to its subject-matter, to add any thing to it is to alter and vary it. Suppose a farmer were to hire a laboring man for six months from the first day of April, by a contract in writing, could the laborer prove by parol that the agreement was for twelve months, and thus get the higher rate of wages given in summer, during the winter months? Or, *vice versa*, would it not be inconsistent with the contract, if commencing in October, for example, for the farmer to

prove that it extended through the summer? The laborer might say he was willing, for that rate of wages, to work during the winter, but not to labor beyond that time at that rate. Such evidence would change the contract as it appeared in the writing, and would show a contract less favorable to one of the parties than the written agreement. Now the case before us is substantially the same. The wages here were higher at San Francisco than at Calcutta, and to permit the mate to prove a contract to Boston would make the owner pay a higher rate from Calcutta, and would thus injuriously vary his contract. So, if the reverse were the case, the mariner's contract would be changed to his injury, by parol evidence of an agreement to go farther at the lower rate. I do not introduce this as if his case were equivalent in all respects to that of the owners, since the obligations of the parties are different, but to show that such evidence would vary the contract.

In this case, however, another principle is applicable.

When the written contract is incomplete on its face, and tacitly refers to parol evidence, such evidence may be admissible. Here there is a palpable defect in the written contract. The first copy of the articles does not contain the libellant's name. The second does; but neither contains any statement as to the rate of wages. By the written contract the libellant agrees to go as first mate to Calcutta, but no wages are specified. Does that mean that he is to go for nothing? That certainly is not the inference to be drawn in mariners' articles. If it does mean this, it is the duty of the owners so to express it. When services are rendered, and there is nothing to show that the person performing them is better off at the end of his voyage, but, as is the case here, rather worse, it is not to be inferred that his services were to be rendered for nothing. The parol evidence then must come in to show the wages. Now, if it is admitted here, we must admit the whole, because we cannot separate one part from another. To show what was really the compensation to be paid, the whole agreement alleged must be shown. Suppose it be said it was $50 per month — it was in fact more, for the agreement alleged was that the libellant should have $50 a month to Calcutta, and, besides that, $50 a month from there to Boston. The additional voyage to Boston, at that rate, was an essential part of the consideration. If the parol evidence comes in at all, it must come in to show

the exact consideration, — and in this view the whole evidence offered may come in.

Another view may be suggested. The contract on its face is for a voyage to Calcutta. If that is the whole contract, then the mate was to be discharged at Calcutta. But that is contrary to the law. When the master sailed he was bound to give a bond that this man should be brought back to the United States. A contract to leave him abroad is not in conformity with the statute.

Is it then to be presumed that a contract on its face in violation of law is so complete that parol evidence is inadmissible to show that the real contract was in conformity with the law? May not a mariner show, in such a case, that this was not a contract to leave him abroad? I suggest this as matter of inquiry, but I rest my decision on the ground before stated of the omission of the rate of wages.

The parol evidence being then admitted, it is proved very clearly that the contract was, as is alleged by the libellant, for a voyage from San Francisco via Calcutta to Boston.

The libel is sustained, and I decree wages to Boston, with the expenses incurred in Calcutta, and interest up to the date of the decree.

I shall not deduct the money earned by the libellant on his return. A mariner discharged under such circumstances is not at liberty to aggravate the damages for which the owners are liable, by incurring unnecessary expenses; and if this man had had the situation of a chief, or, perhaps, second mate offered to him, he would have been bound to take it; but after having been for many years a master of a vessel, I do not think he was bound to take the place of a common seaman. He would have been entitled to take passage home in the cabin, at the expense of the owners; but it is not reasonable for a mate to be required to work his passage home as a common seaman, to save money for them, — and in fact he has saved money for them by the course he pursued. His entire wages are not more than an indemnification.

The libel against the master depends on the same state of facts, and rests on the ground that a wrong has been committed, for which the libellant is entitled to a remedy against the master, but not against the owners. For if the libellant could recover from the owners all he is entitled to as against the master, only one suit can be sustained. The question then comes to this: Can he recover anything

against the master which he could not against the owners? What is there against the master? There is nothing to show any tort except the violation of a contract. If the libellant were a passenger to Calcutta, without the rights reserved to a mariner to return home, he might have been put ashore without wrong. There was no other wrong, violence, or injury, except the violation of the contract.

The master said the contract was at an end, and that the libellant should remain at Calcutta, and left him to take the consequences; but the contract was not at an end. It was a contract, however, with the owners, made by their agent, which they violated through him, and for the legal damages of such violation they are liable. Now the contract of the owners with the mariner was not merely to pay wages in consideration of his services, but to provide him with board on their vessel, and that he should continue the voyage to the United States. And if this was not complied with, he is entitled to an adequate compensation from them for the damages resulting from the violation of their contract, including his expenses at Calcutta, and for his return home. And this would cover all the damages he seems to have sustained.

I shall dismiss this libel, therefore, and, as it was unnecessarily brought, I shall decree sufficient costs to the respondent, to compensate for the trouble of filing the answer — but no more. In the first suit, decree for the libellant, for six hundred and six dollars, the amount claimed by the libel, and costs. In the second, libel dismissed, with ten dollars costs to the respondents.

R. H. Dana, Jr., and *Geo. S. Hale*, for the libellant; *F. H. Allen*, for the respondents.

Supreme Judicial Court of Massachusetts, Suffolk, ss. March Term, 1853.

CHARLES S. HOMER ET AL. *v.* ALFRED WOOD ET AL.

Partnership — Discharge by one Partner, of a Partnership Debt, in Fraud of the Firm.

Where one member of a partnership settled a demand due from him individually by setting off and discharging a demand due from his creditors to the partnership, it was held that although this was a fraud committed by him upon the partnership, that an action at law could not be main-

tained in the name of the partnership to recover the demand due it from such creditors.

This was assumpsit for goods sold and delivered.

The case was submitted to the court of Common Pleas on an agreed statement of facts, and came to this court by appeal.

The action was referred to an auditor, and the balance, as reported by him, was agreed to be the balance or sum due the plaintiffs, if any thing was due them.

The plaintiffs were partners, doing business as hardware dealers in Boston, from October 1, 1846, to October 1, 1849, under the name of Homer & Company.

Homer lived in Cambridge; Leighton, the other plaintiff, in Boston. The former was the acting member of the firm, and had charge of the business of the firm.

Leighton, however, had at all times access to the books of the firm, and examined them whenever he chose to do so; and he did so occasionally.

The defendants were partners in the grocery business at Cambridge, and furnished goods from their store to said Homer for his family's use, commencing in October, 1846, and amounting on the twenty-second day of February, 1850, to about $412.54; and on that day Homer and the defendants settled said bill by setting off the same in payment of the bill of the plaintiffs against the defendants, and Homer receipted the plaintiffs' bill in the name of the firm, and gave his own note to the defendants for the small balance due them after said set-off.

The settlement was made by Homer and the defendants, without the knowledge or express assent of said Leighton, nor did he know until after the settlement that Homer was indebted to the defendants, nor has he since ratified that settlement.

Homer was indebted to the firm of Homer & Company in a large sum; but the defendants had no express or implied knowledge of that fact; and it was agreed that said settlement was made in good faith, so far as the defendants were concerned.

Ephraim Buttrick, for defendants; *Willey & Hutchins*, for plaintiffs.

The opinion of the court was delivered by

Bigelow, J.— The general principle of law is too well settled to require either argument or authority to sustain it, that one partner has no right to apply the partnership securities and effects in payment of his private debts and liabilities without the assent, express or implied, of the

other members of the firm. To set off a debt due to a copartnership, without such assent, in payment and satisfaction of a separate debt, due from one of the copartners, would be a manifest violation of this principle. The authority of copartners is limited by law to the transaction of the business of the firm, and any application of its property, effects or credits to any other purpose by one copartner is regarded as an excess of authority, and as a fraud upon those members of the firm who do not authorize or participate in the act. As a necessary result of this rule, and in order to render it effective as a shield against fraud, it is also well settled, that a third person, creditor of an individual member of the firm, who obtains from him partnership securities and effects in payment of his separate debt, will, until the contrary is proved, be deemed to act *malâ fidè* and in fraud of the rights of the other copartners. It is by the application of these principles that the plaintiffs in the present action seek to recover of the defendants, as a debt still due from them to the firm, the account which was settled and discharged by one of the plaintiffs, Homer, by a set-off of the separate debt due from him to the defendants. The case, therefore, presents the interesting and important question, never hitherto judicially determined in this Commonwealth, whether the equity, to which a defrauded partner is entitled under such circumstances, can be supported and worked out in a court of law.

The present action, being in form *ex contractu*, can be maintained only by joining both partners as plaintiffs. The innocent or defrauded partner cannot recover in his own name alone. The rules of law compel him, as essential to his right of recovery, to unite with him his fraudulent partner, who has already received from the defendants full accord and satisfaction of the debt, now demanded in this action, and given to the defendants a discharge therefor, which they now plead in bar. The suit necessarily proceeds on the ground that both plaintiffs must recover, if at all; because the contract being joint, the remedy upon it must be joint also. It presents a case, therefore, where the the legal rights and remedies of parties are indissolubly blended, and cannot be separately supported and enforced.

How, then, can the plaintiffs recover of the defendants in the present suit the debt, which has been once paid to and discharged by one of the joint creditors? Only by

alleging, in answer to such payment and discharge, the fraudulent acts of one of the coplaintiffs in misapplying the partnership assets in payment of his separate debt; or, in other words, the plaintiffs can maintain their action solely by proving fraud in one of themselves. This would seem to be a manifest violation of the salutary principle, that a party in a court of law shall not be heard to allege his own bad faith, as a foundation of his right of recovery. In the language of Lord Tenterden, "we are not aware of any instance, in which a person has been allowed, as a plaintiff in a court of law to rescind his own act, on the ground, that such act was a fraud on some other person." Nor can it make any difference in the application of this principle, that the party who seeks to do this, sues not in his own name alone, but jointly with another person, who is innocent of any fraud. In either case, the rule is equally applicable for obvious reasons. The right of action being joint, if one of the coplaintiffs dies, the right then accrues to and vests in the survivor. A joint action does not abate by the death of one of the plaintiffs, nor are the rights of the parties at all changed or affected thereby in a court of law; so that, in the present case, if the innocent partner had died, Homer, the fraudulent partner, might maintain this action alone in his own name, and thus, for his own benefit, avoid his own act by proof of his own misconduct, and recover over again from the defendants the very debt which has once been paid to him, and from which he has discharged them in full. But it is not necessary to resort to this supposition to illustrate the result which would follow if this action can be maintained. In every aspect it is a suit to benefit the fraudulent as well as the innocent plaintiff. If the partnership is solvent, and a balance of profits remains after paying the partnership debts and discharging the sums due to the other copartners, a share of the amount recovered will go directly to the party who has done the wrong. If the partnership is insolvent, then the share belonging to the fraudulent copartner, when recovered, will go to reduce the amount of his indebtment or liability as a member of the firm. Such action, therefore, cannot be maintained without involving the inconsistency of a party being allowed in a court of law to sue and recover for his own use and benefit upon the ground of his own misconduct. The case is widely different from that of a suit against a partnership, upon a note or other instrument given by one copartner, in payment of a private

debt, in the name of the firm. There the innocent party, being defendant, truly alleges that he did not make the promise or agreement set out in the declaration. The fraudulent partner obtains no benefit by such defence; he is still bound by the contract; but here, the fraudulent party is necessarily a plaintiff, and comes into court claiming to set aside his own release, and maintain his action on the ground of his own fraud. In the former case, the defence is not the defence of the fraudulent, but of the injured and defrauded party only. In the latter case, he who profits by the fraud makes his misconduct the ground of his recovery.

It may seem hard and inequitable that the innocent party, who is himself the victim of his copartner's fraud, should be thus shut out from his legal remedy. But the legal connection of copartners is so peculiar and intimate, that their rights and remedies in a court of law are necessarily limited by the relation which they hold to each other. They cannot sue each other. They cannot maintain an action against one of their copartners who is indebted to them in his individual capacity, nor against another firm of which one of their copartners is also a member. These and similar restrictions are the unavoidable results of the technical rules of law in their application to the mutual relations of copartners, and serve to show, that, in a court of law, the rights of copartners cannot always have corresponding and adequate remedies. These must be often sought in a court of equity only.

The leading case in England, in which the principle above stated as applicable to the case at bar is recognized, is *Jones* v. *Yates*, 9 Barn. & Cres. 532. In that case, Sykes & Bury being partners, Sykes fraudulently gave the bills of the partnership in discharge of his private debt, and also applied part of the partnership funds to the same purpose. The question was, whether the partners, Sykes & Bury, could recover in a joint action the amount of the bills and of the money in a court of law by an action of trover for the bills, and of assumpsit for the money, and it was held that they could not. The same principle was laid down in the earlier case of *Richmond* v. *Heapy*, 2 Stark. 202. It was there held, that three copartners could not be petitioning creditors for a commission of bankruptcy upon bills of exchange, which one of the three copartners had agreed to pay at their maturity, although such agreement was made in fraud of his copartners, be-

cause by the English bankrupt act no person could be a petitioning creditor who could not maintain an action at law upon his debt or demand. The case is there significantly stated by the court, that if the copartner seek to recover by relying on their copartner's strength, they must also abide by his acts. The authority of the case of *Jones* v. *Yates* is substantially recognized and affirmed in the more recent case of *Wallace* v. *Kelsall*, 7 Mees. & Welsb. 264, 273. Baron Parke there says, "that a person cannot be allowed as a plaintiff in a court of law to rescind his own act by joining his copartner with him." The rule is laid down to the same effect, but in somewhat different language, in the text writers. Collyer on Part. § 643, thus states it: "There is another particular in which the rights of partners to sue *ex contractu* appears to be limited, and it seems clear that the equity to which defrauded partners are entitled in such cases cannot be supported in a court of law, when the partners appear as plaintiffs, for, appearing as plaintiffs, they must join with them their fraudulent partner, and, relying on his strength, they must suffer by his fraud. They are, therefore, placed in a dilemma which makes their suit at law a nullity." So Story, Part. § 238, states the same principle: "If a security be a fraudulent contrivance between the guilty partner and the third person, in fraud of the partnership, there can be no suit against such third person at law, founded thereon, since the guilty partner is at law a necessary plaintiff in every such suit." This rule has been applied in New Hampshire to a transaction not unlike that shown to have taken place in the present case. *Greeley* v. *Wyeth*, 10 N. H. 15. In that case it is decided that if one copartner, without the knowledge of his copartners, makes a special contract to perform labor or sell goods of his firm and to take pay in specific articles for his own separate use, and the contract is executed by the parties, an action cannot be maintained in the name of the partners to recover the value of the goods so sold or labor performed, on the ground of fraud in the partner who made the contract. The decision of this case is put by the court distinctly on the doctrine as stated in *Jones* v. *Yates*.

The counsel for the plaintiffs, in his elaborate research of the authorities in this country, has found several cases where actions have been maintained by copartners to recover debts due the partnership, which have been set off and discharged by one of the partners in payment of his

separate debt. But in none of them, with a single exception which will be noticed hereafter, are the above cited authorities or the principles upon which they proceed adverted to. The courts, in all these cases, lay down the familiar rule of law, that the payment of a private debt of one copartner with the assets of the firm is a fraud upon the other copartners; and upon that ground, and that only, allow the partners to recover by a suit in their own name a debt which has been thus paid and discharged, without any reference to the consideration that a party plaintiff is thus allowed to rescind his own act for his own benefit, by an allegation of his own fraud. The decisions in New York upon this subject are all based on the case of *Dob* v. *Halsey*, 16 Johns, 34, which was determined several years before the leading case in England of *Jones* v. *Yates*, and in none of them was the attention of the court drawn to the technical difficulty of supporting a joint action by plaintiffs under such circumstances. Besides, the cases of *Gram* v. *Cadwell*, 5 Cow. 489 (which also preceded *Jones* v. *Yates*), and *Evernghim* v. *Ensworth*, 7 Wend. 326, were ultimately decided upon other and distinct grounds. See also *Minor* v. *Gaw*, 11 Sm. & Mar. 322; *Brewster* v. *Mott*, 4 Scam. 378. The case of *Purdy* v. *Powers*, 6 Barr, 492, is the only authority cited by the counsel for the plaintiffs which is directly in conflict with the English cases, and in which they have been considered and their reasoning and authority denied. But that decision was made after the courts of Pennsylvania had long been committed to an opposite doctrine without reference to the principle on which the cases in England are based. Nor can the decisions of the courts of that State be considered of any great authority in a question of this kind, because equitable remedies are there administered through the medium of common law courts. Indeed, in the very case cited, the court say they would permit in all cases, if necessary, an action in the name of the partners to prevent a failure of justice, though, in form, it might present the incongruity of a party suing on the ground of his own *malâ fidês*. In this Commonwealth, the rules of the common law cannot be strained to meet the equity of any particular case.

The case of *Rogers* v. *Batchelor*, 12 Peters, 221, was not a suit brought in the name of the fraudulent copartner, and is not, therefore, an authority applicable to the present case.

Upon a careful consideration of the authorities and the principles upon which they are founded, we are of the

opinion, that, in a case like the present, the plaintiffs are not entitled to recover. In arriving at this result, we do not intend to decide any thing beyond the precise case before us. The parties here do not stand *in pari delicto*. It is expressly agreed, that the defendants, in making the settlement with the fraudulent partner, acted in good faith. If, therefore, they are chargeable with *malâ fidês*, it is only that technical fraud which the law infers from the mere fact that they knowingly have paid their debt to the firm by a set-off of the debt due to them from one of the firm. Not so with Homer, the fraudulent plaintiff. He well knew the extent of his own authority, the amount of his own indebtment to his copartner, the condition of the firm, and that he was committing a moral as well as a legal fraud upon his copartner by the settlement. All, therefore, that is determined in the present case, is that an action cannot be maintained, in the name of copartners, to recover a debt due to the firm, which has been paid by a set-off of the separate debt of one of the copartners with his assent, and discharged by him, when the defendants, in making such set-off and payment, and obtaining a discharge, have acted in good faith without actual fraud and collusion with one of the copartners.

Judgment for defendants.

Hampden ss. September Term, 1853.

RICHARD D. GRANGER *v.* ISAAC W. BROWN.

Landlord and Tenant — Notice to quit.

A notice to quit for nonpayment of rent, given by a landlord to his tenant, which states, either in general terms, or by a specific designation of day and date, the time when the tenant is required to leave the premises, is sufficient, although it does not state the cause for terminating the tenancy.

This was an action on the Revised Statutes, *c.* 104, originally commenced before a justice of the peace, and removed, upon a suggestion of title, into the Court of Common Pleas.

At the trial in that court, before MELLEN, J., the plaintiff offered evidence tending to show that the defendant hired the premises by an oral contract, for an indefinite

term, at an annual rent of $75, payable monthly; that the defendant did not pay the rent when due; and, that, on or about the 1st of November, 1850, a notice in writing was given by the plaintiff to the defendant to quit the premises in fourteen days; but there was no evidence that the notice stated the cause to be nonpayment of rent, or a purpose to terminate the tenancy, otherwise than was expressed in notifying him to quit the premises.

The presiding judge instructed the jury that such a notice would be insufficient in law to support the action, and directed a verdict for the defendant. The plaintiff alleged exceptions.

Bigelow, J. If the notice to quit, in the present case, was seasonably given, and contained, either in general terms or by a specific designation of day and date, the time when the tenant was required to leave the premises, it was valid and sufficient, although it did not state the cause or reason for terminating the tenancy. It was then a legal notice in all respects, and gave due warning to the tenant that the landlord intended to enforce his lawful right. As every one is presumed to know the law, the tenant had thereby constructive notice of a legal cause for terminating his tenancy.

It would have been otherwise, if the notice to quit had contained no statement of the time when the tenancy was to be determined, or had stated it erroneously. *Prescott* v. *Elm*, 7 Cush. 346; *Oakes* v. *Munroe*, 8 Cush. 282; *Sanford* v. *Harvey*, Suffolk, March, 1853; 17 Law Rep. (7 N. S.) 160.

The court below, therefore, erred in adjudging the notice to be insufficient, on the ground stated in the exceptions.

Exceptions sustained.

H. Morris, for the plaintiff.

W. G. Bates, and *E. W. Bond*, for the defendant.

Miscellaneous Intelligence.

An Insurance Secretary. — There lies before us an advertisement which, as a professional incident, may be noticed here. *The London and Provincial Law Assurance Society*, a highly respectable institution, had for

its secretary one JOHN KNOWLES. Somewhere about the 16th Dec. last, as the advertisement in question informs us, said JOHN KNOWLES took it into his head to walk off with a considerable sum of money belonging to the society; how much is not known; but as the large reward of 100*l.* is offered for his apprehension, and the famous "Foresters" are employed to hunt him down, it may be assumed that the defalcations are formidable. The fact is a serious and a painful one; but, in spite of its gravity, who can withhold a smile when reading the description of their secretary, so graphically given by the directors in the advertisement that offers the 100*l.* for his apprehension?

"John Knowles, late of 32, New Bridge-street, Blackfriars, and 2, Leslie park Villas, Croydon-common, late Actuary and Secretary to the London and Provincial Law Assurance Society, absconded on Saturday the 16th December instant: age 39, height about 5 feet 7 inches, of rather full habit of body, weighing about 11 stone and a-half, fair complexion, round face, grey eyes, nose rather aquiline, and pitted with the small-pox, small mouth, light brown hair, and rather curly, sandy whiskers, bald on the crown and at the top of the head (wears the hair combed thinly over the bald part from the side,) large hands, the thumbs bending back, knock-kneed, especially in the right leg, has a prominent bunion on one of his feet, skin on the palm of his right hand peeled off as if from a burn or scald, mincing in his manners and speech, squares his elbows, and swings his arms when he walks, has a trick of rubbing the palms of his hands together when speaking; dresses gaily, being fond of a variety of colors; had on, when last seen, an olive-brown frock coat with a velvet collar, and a dark loose poncho wrapper or overcoat, with very loose sleeves; maker's name in the inside of his hat "Townend." Uses as a walking-stick a polished black Sussex thorn, with a small knob for the handle. Carries a square silver snuff-box, inscription on it "J. Knowles, Esq., from J. and C." Mrs. Knowles, (supposed to be with her husband,) formerly Miss Ann Jane Colman, age about 38 or 39, height 5 feet 7 inches, with stout, oval good-natured face, darkish hair and eyes; dresses in black silk with black satin stripe in it, dark cloth mantle, a large brown fur muff, and has with her a small black and tan English terrier, and a puppy of the same breed."

The wonder is, how the directors, who are all lawyers, came to put into the responsible post of secretary and actuary "large hands, thumbs bending back, knock-knees, *especially in the right leg*, a prominent bunion, a peeled palm, (*query, with itching?*) mincing manners and speech, square elbows, rubbing hands when speaking," &c., &c. It might have been supposed that the very aspect of such a man would have alarmed a board consisting of some twenty-four keen lawyers! — *Law Times.*

PHOTOGRAPHIC LIKENESSES OF CRIMINALS. — A short time ago a statement appeared in the newspapers to the effect that Mr. Gardiner, of Bristol gaol, had commenced the practice of taking photographic likenesses of notorious offenders, with the view of facilitating their detection. One of the first to perceive the advantages that might be derived from this novel application of the art was Mr. Edis, the very efficient governor of our town gaol, who considered it most desirable that the plan should be carried out in all the gaols in the country. The magistrates of the borough, taking a similar view, supplied him, without any loss of time, with the necessary apparatus; and for some time past Mr. Edis, with a view of acquiring proficiency in handling the instrument, has been making experiments. Although the winter season in our climate is unfavorable to the taking of good likenesses, especially such dull weather as we have lately had, Mr. Edis has been very successful; and some of those he has taken would not

be a discredit to an experienced photographer. It may perhaps not be amiss to explain, that, in the photographic process, the likeness is first impressed, solely by the action of the light on glass, or rather on a prepared surface on glass, in a reversed position; and that, from this original, as many copies as may be required can be printed on paper, also by the same simple agency. It is easy then to see how valuable an aid the art may become in the apprehension of criminals and the prevention of crime; for, if necessary, a likeness may be sent to every gaol in the kingdom; and there can be no mistake about identity, for there is the image of the individual painted by the light of heaven itself. Mr. Edis and the justices deserve credit for their spirit in this matter. — *Bristol* (*Eng.*) *Paper.*

First Sentences. — Alderson, B. in his charge to the grand jury at Northampton, England, said: —

"Some years ago, the gaoler of the great gaol at Glasgow turned his attention to the effect of the different periods of imprisonment on criminals, and he came to the conclusion that by a severe imprisonment the *first* time there was a chance of effecting some reformation, but very little afterwards. In a series of experiments, extending over ten years, he found that when the first imprisonment was for fourteen days the recommittals were 75 per cent.; when it was thirty days, they were 60 per cent.; when it was forty days they were 50 per cent.; when it was sixty days, they were 40 per cent.; when it was three months, they were 25 per cent.; when it was six months, they were 10 per cent.; when it was nine months, they were 7 1-2 per cent.; when it was twelve months, they were 4 per cent.; when it was eighteen months, they were 1 per cent.; and when it was twenty-four months, they were none at all. These were the simple facts of the case. It was not a single experiment, but it was found to be the regular result; as the severity of the first punishment increased so did the number of returns decrease. Well, but then they would say, how hard it was to punish a first and light offence with twenty-four months' imprisonment. He agreed that it would be hard, and that it would operate injuriously on public opinion, to which it was necessary that they should defer. Not that he much valued public opinion, because in general it was the opinion of the three tailors of Tooley-street; but he spoke of the opinion of the just, and the humane, and the educated. But now, under the recent Act, by establishing reformatory schools, they could annex to a sentence of fourteen days' imprisonment the sending the criminal of a certain age to a reformatory school, for a period long enough, it might be hoped, to produce a yet more beneficial effect than the lengthened imprisonment." — *Law Times.*

A Legal Sign in Paris. — "To-day we started out to hunt up a sign that attracted my attention when last in this capital. It used to hang in one of the smallest streets that lead to the Palais de Justice, and from its peculiarly professional character I thought it would prove interesting to my companion. The sign was very old and might almost date as far back as Hugh Capet. It gave evidence that the public opinion of the advantages of law was of very ancient date and that our ancestors fared but little better than we, when they had their rights regularly settled by an appeal to the constituted tribunals. Upon one side of the sign was painted a man whose suit of clothes was threadbare and scarcely covered him. Over his head was written "This is the man who went to law and won his *suit*." On the other side was a poor fellow, stark naked and evidently in great distress. "This is the man who went to law and lost his *suit*," was the significant inscription over his head. Underneath stood a fat pampered lawyer dressed with legal gown, and bearing the motto "This

is the man who pleaded the cause on both sides." — *Brushwood picked up on the Continent.*

Ornamental Judges. — Our Vermont and New Hampshire friends will take the sense of this: "Q. was elected 'side judge' in one of the county courts of Vermont. He was not very well versed in 'legal yore,' so he called on a friend of his, who had served as a side judge to make some inquiries concerning the duties of the office. To his interrogatories the reply was: 'Sir, I have filled this important and honorable office several years, but have never been consulted with regard to but one question. On the last day of the spring term, 184--, the judge after listening to three or four windy pleas of an hour's length each, turned to me and whispered — *C., isn't this bench made of hard wood? and I told him I rather thought it was!*" — *N. H. Paper.*

Literary Forgeries. — Letters from Weimar state that a literary committee, engaged in investigating the forgery and sale of autographs attributed to Goethe and Schiller, have received from various parts of Germany 12,000 manuscripts, the owners of which distrust their genuineness. A young man, one of the attendants of the Grand Ducal Library, and formerly a shoemaker, has been arrested, and confesses that for two years he has devoted himself most assiduously to meet the public demands for autographs of the poets at a reasonable rate. Arrests of vendors are going on in the Grand Duchy of Weimar, in Hanover, and in Prussia. The children of Schiller are said to be among the dupes of the rogues. — *N. Y. Evening Post.*

Notices of New Books.

The Law Glossary: being a selection of the Greek, Latin, Saxon, French, Norman and Italian Sentences, Phrases and Maxims, found in the leading English and American reports, and in elementary works: with historical and explanatory Notes. Alphabetically arranged, and translated into English, for the use of the members of the legal profession, law students, sheriffs, justices of the peace, etc. etc. Dedicated, (by permission,) to the Honorable John Savage, late Chief Justice of the Supreme Court of the State of New York. By Thomas Tayler, author of "Precedents of Wills, drawn conformably to the Revised Statutes of the State of New York." Fourth edition, revised, corrected, and enlarged. By a member of the New York Bar. New York: Lewis & Blood, Law Booksellers and Publishers, No. 84 Nassau street. 1855.

The extravagant absurdity of several of the translations which met our eyes, on first opening this book, and the elaborate puff of the editor's preface, have induced us to give it a pretty thorough examination, some of the results of which we lay before our readers.

Lest we should be suspected of injustice to the editor, (who has prudently concealed his own name,) we print in full his preface, which is in these words:

"The great utility of the following work, and its appreciation by a discerning public, are shown by the rapid exhaustion of three large editions, and the demand for a fourth. It is, indeed, extremely popular with the profession, and has become an almost indispensable adjunct of every law

library. Nor is its practical value confined to lawyers, for whom it was originally prepared and mainly designed. The intelligent of both sexes, and among all classes of our citizens, no less than the members of the other learned professions, cannot fail to derive profitable instruction from its pages. Its matter has been carefully gathered with judgment and great good taste, from the ancient oracles and standard authorities of the law. It contains many phrases of classical beauty, and much curious learning, expressed in the rich, though quaint language, of the olden time. Nowhere else, within the same compass, can be found such stores of rare and useful information.

"Thus much we have felt at liberty to say in commendation of this work. All who are familiar with it will bear us witness that we have not over-estimated it, nor can we, as humble editors of the distinguished labors of another, (now no more,) be charged with egotism in thus frankly expressing our admiration of this his legacy to the generations to come after him.

"A single word will dispose of what we have done. The work has been thoroughly revised with a view to its entire accuracy, and it is now placed in a permanent form. To the present edition have been added over one hundred pages of new matter, comprising upwards of eighteen hundred phrases, besides several notes. It is now complete in all respects, and we confidently look for a continuance of the patronage and favor it has hitherto received."

We regret that our duty to our profession and to the public, and our regard for truth, prevent us from giving the testimony which the editor so confidently expects, and oblige us to adopt and enforce the opinion heretofore expressed of the first edition. "The author has not only given us a collection of phrases and sentences which needed no interpretation, and often given us those in several places, — he has misconceived and mistranslated again and again where a lawyer of the meanest pretensions would not have failed, and again and again where a schoolboy of the lowest form would have blushed to find himself wrong. He shows sheer ignorance of all law — the common, the civil, and the French, as well as of the Latin and French languages." Such was the opinion expressed, and fully supported by proof, in the twelfth volume of the American Jurist, pp. 248–270, to which we would refer those of our readers, who have the curiosity to pursue the subject, for a large collection of Mr. Tayler's absurdities, with learned and appropriate comments. We propose to confine our selections to instances not mentioned in that article.

1. We would particularly call attention to some instances of Mr. Tayler's manner of quoting and translating law maxims. When Sir James Mackintosh said that maxims were the condensed good sense of nations, he could not have anticipated the versions in this volume.

Mr. Tayler was justly found fault with in the American Jurist for his ignorance of Branch's Maxims. His successor has shown an equal and still less excusable ignorance of the treatise of Mr. Broom, which has passed through at least two editions in England, and two in this country, within the last ten years, and which it is superfluous to praise to those to whom it is known, and to which it is sufficient to call the attention of those who are yet unacquainted with it.

"*Actor sequitur formam rei.* 'A plaintiff follows the course of proceeding,' *i. e.* according to the nature of the property to be recovered." This is one instance, of many, which induce us to suppose that the labor of compiling and translating this book was distributed between two persons, one of whom did not know enough Latin to make a true copy, and the other did not know how to translate it. This is clearly a blundering copy

of "*Actor sequitur forum rei*," thus accurately translated by Branch: "The plaintiff follows the court of the defendant, *i. e.* the plaintiff must sue in that court which has jurisdiction over the defendant."

"*Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum, verificatione facti tollitur.* A latent ambiguity of words is supplied by the verification (or plea); for that uncertainty which arises by the deed, is removed by the proof of the fact itself." This translation of the familiar maxim of Lord Bacon is not only downright nonsense — for of what assistance could the plea be in construing a written contract! — but it is inconsistent with itself, and not law; for the last clause asserts that an ambiguity "which arises by the deed" (which would be a patent, and not a latent ambiguity) is removed by the proof of the fact itself. The true meaning is well expressed in Broom's Maxims, (2d ed.) 468: "Latent ambiguity may be supplied by evidence; for an ambiguity which arises by proof of an extrinsic fact may in the same manner be removed."

"*Ei incumbit probatio qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit.* The proof lies upon him who accuses, not on him who denies; as, in the nature of things, the fact of the denial is no proof." The reason, as here given, would seem to imply that the fact of an affirmation was proof. The true meaning is, "The burden of proof is on him who alleges, not on him who denies; for in the nature of things there can be no proof of a negative."

"*Et ubi eadem est ratio, idem est jus.* And where the same is reason, it is also law." What "the same" refers to, in this translation, the translator does not inform us; but whatever it is, he makes it feminine in the first clause, and masculine or neuter in the second. Lord Coke's original translation is perfect. "Like reason doth make like law." Co. Lit. 10 *a*. And here is pretty clear proof that Mr. Tayler never read even ten pages of Coke.

"*In contractibus veniunt ea quæ sunt moris et consuetudinis in regione in qua contrahitur.* These [those] things occur in agreements, which are of usage and custom in that place where the contract is made." They are very likely to, certainly. But the point of this maxim is, that if they do not, they still form a part of the contract, or as otherwise expressed, *In contractis* TACITE *insunt quæ sunt moris et consuetudinis.*

"*Nam quod remedio destituitur, ipsa re valet, si culpa absit.* For that which is without remedy assists the thing itself, if no fault exists." How that which is without remedy can assist any thing, or what the thing is which it assists, or how "*valet*" comes to mean "assists," we are not informed. The real meaning is, That which is without remedy, avails of itself, if there be no fault (in the party seeking to enforce it).

"*Necessitas inducit privilegium quoad jura privata.* Necessity gives a privilege like private rights." Is it necessity, or a privilege, that is *like* private rights? And in what does the likeness consist? By substituting the ordinary meaning of *quoad*, "as to," or "with respect to," the maxim becomes intelligible.

"*Quicquid solvitur, solvetur* [*solvitur*] *secundum modum solventis.* Whatever is paid, let it be discharged agreeably to the (general) mode of payment." If this translation has any meaning at all, (and we cannot see that it has,) it certainly has not the meaning of the original, which expresses the right of a debtor, making a payment, to direct to which of several debts it shall be applied. See *Mills* v. *Fowkes*, 5 Bing. N. C. 461.

"*Qui facit per alium, facit per se.* He who acts for another, does it himself," We had thought it impossible to misunderstand this maxim, until we saw Mr. Tayler's translation. But he has contrived to give it a meaning exactly opposite to the true one; for whereas the maxim declares that

an act done by an agent in behalf of his principal is the act of the principal, Mr. Tayler asserts that it is the act of the agent.

"*Verba fortius accipiuntur contra proferentem.* Words are taken more strongly against him who asserts them (as the grantor, feoffer, &c.)" This is well enough; but by the side of it is another version, which makes the construction of the words depend, not on the question by whom they are used, but on the question by whom the instrument containing them is produced in evidence. "*Verba cartarum fortius accipiuntur contra proferentem.* The language of deeds should be taken forcibly against him who produces them (or gives them in evidence)." So let any one, who pins his faith on this work, beware how he gives in evidence the deeds under which he claims title.

2. Passing over several other maxims which we had marked for quotation, we submit to our readers Mr. Tayler's rendering of a few of the Latin words and phrases most familiarly known and oftenest cited.

"*Verbum imperfecti temporis rem adhuc imperfectam significat.* A word of time imperfect, shows that the matter is incomplete (or unfinished)." "A verb in the imperfect tense," &c. would be more intelligible.

"*A posteriori.* From the latter. Words often referring to a mode of argument."

"*A priori.* From the former. Vide '*Ad posteriori.*'"

"*Bona mobilia.* Moveable things; as mortgages, bonds, &c."

"*Bona notabilia.* Extraordinary (or notable) goods; as bonds, mortgages, specialties, bills of exchange, &c."

"*Casus fœderis.* The matter of the treaty."

"*De jure; de facto.* 'From the law; from the fact.' Sometimes an offender is guilty the moment the wrong is committed; then he may be said to be guilty *de facto.* In other cases, he is not guilty until he be convicted *by law;* then he is guilty *de jure.*"

"*In invitum.* Unwillingly."

"*In rem judicatam.* In the matter adjudged."

"*Ipso facto, et eo instanti.* In fact, and immediately."

"*Fructus industriales,*" we are here informed, include fixtures.

The common form of commencing a plea, "*Et modo ad hunc diem venit,*" "and now at this day comes" the defendant, &c., is translated, "And in this manner he came to the day (or to the end)."

"*Sine suo suorumque prejudicio,*" (without prejudice to him or his,) is translated, "without prejudice to him, or from them."

"*In executione sententiæ, alibi latæ, servare jus loci in quo fit executio; non ubi res judicata.*" This is made nonsense by translating "*alibi latæ*" "otherwise extensive," instead of "passed elsewhere."

"*Episcopi, sicut cæteri barones, debent interesse judiciis cum baronibus, quosque præveniantur* [*quousque perveniatur*] *ad diminutionem membrorem* [*membrorum*] *vel ad mortem.* The bishops, as well as the other barons, ought to be present at judgment with the lords, unless prevented on account of loss of limb or death." Mr. Tayler's spelling of the original, which we have literally preserved, is a fair instance of his accuracy in this respect. And his translation would make the validity of the excuse of the spiritual lords depend, not on the question whether it was a question of life or limb with the accused; but whether their own arms, legs and necks were unbroken.

3. Some of the explanations and illustrations are worthy to be quoted.

"*Lex terræ.* The law of the land; generally taken in contradistinction to the civil law, or code of Justinian."

"*Scuto magis quam gladio opus est.* 'It is used rather as a shield than

a sword.' As by the English law, an old mortgage term, regularly assigned, from time to time, protects against dower, and subsequent latent incumbrances. This may be, in some respects, a new doctrine; but see Preston, Sugden, &c."

"*Super subjectam materiam.* 'On the matter submitted.' Thus, it is said a lawyer is not responsible for his opinion, when it is given '*super subjectam materiam*," on the circumstances as laid before him by his client." This may be a very comfortable doctrine to the lawyers who read this book; but we think it must rather astonish and disgust "the intelligent of both sexes, and among all classes of our citizens, no less than the members of the other learned professions," who, as we are informed in the editor's preface, "cannot fail to derive profitable instruction from its pages."

4. The translations of the precepts of the civil and maritime law are not more fortunate.

"*Id quod nostrum est, sine nostro facto ad alterum transferre non potest. Facti autem nominis, vel consensus, vel etiam delicti intelligitur.* That which is our own property cannot be transferred to another except by our own act. But it is considered this may be done by deed, title, consent, or even by (the commission of) a crime." The meaning of the last clause, though it could hardly be discerned in this translation, is, "But by the word 'act' is understood either consent or crime."

"*Servitus est jus, quo res mea alterius rei vel personæ servit.* Bondage is a law, by which my property is subject to the circumstances or person of another." And in the note to this sentence is added, by way of explanation, "Slaves had a title to nothing but subsistence and clothes from their master; all the profits of their labor accrued to him," &c. The author confounds slavery with the servitudes of the Roman law. He could not have known of the saying of that law, "*Hanc servitutem non hominem debere, sed rem.* See 3 Touillier Droit Civil, lib. 2, § 379.

"*Requisitum* [*requisitur*] *autem corporalis quædam possessio ad dominium adipiscendum; atque ideo vulnerasse non sufficit.* But it is requisite that a certain corporal possession to the fee be acquired, and therefore it is not sufficient to have been interrupted (or injured)." As in the sentence last quoted Mr. Taylor contrived to blunder between the slavery of a person and a charge upon an estate, he has here applied to land the rule as to the possession necessary to secure property in an animal *feræ naturæ;* though naturally somewhat puzzled in applying the word "wound" (*vulnerasse*) to land. The original is to be found in Grotius, lib. 2, c. 8, § 3, who adds: *Hinc proverbium: Aliis leporem excitasti.*"

"*Si non adest risicum, assecuratio non valet; nam non est materia in qua forma potest fundari.* If there be no risk, the insurance is invalid; for it is immaterial in what form it be recorded." The reason, as here given, shows the author's want of acquaintance with a fundamental principle of the law of insurance. The original is to be found in Roccus, No. 88, and the literal and true translation of the sense is, "Because there is no matter, on which the contract can be founded."

5. A fragment of an ancient English statute is so curiously translated as to be worthy of notice. "*Ne nulles autres engynnes pur prendre ou destruire savaquire, leveres, ne conilles, nautre desduit des gentils, sur peine d'emprisonment d'un an.*" This is taken from the statute of 13 Ric. 2, c. 13, by which it was enacted that all persons, not having lands of a certain value, should not keep dogs to hunt; nor use ferrets, nets, &c., "nor any other engines to take or destroy deer, hares or rabbits, *nor other game of gentlemen*, under pain of a year's imprisonment." Instead of the words in Italics, the author is pleased to insert, "which nature has given to

gentlemen, (for the purposes of sport)." He seems to have been more thoroughly imbued with the spirit of the original, than acquainted with the meaning of the words.

We have already extended this notice to such a length that we shall be obliged to omit many passages which we had marked for comment. We regret that, not having the earlier editions within our reach, we have not the means of distinguishing between the work of Mr. Tayler, and that of his anonymous editor, and we may therefore have charged the deceased Mr. Tayler with the errors of his worthy successor. But as it is the book, and not the man, that we attack, this is comparatively immaterial. We have not space left to show how many of the mistakes, pointed out twenty years ago in the first edition, still remain uncorrected and stereotyped in the fourth. Our object is accomplished, in giving this warning, *Quod ab initio non valet, in tractu temporis non convalescit.*

English Common Law Reports. Vol. 78. — Pratt's Digest. — We have received the seventy-eighth volume of the Messrs. Johnson's edition of the English Reports — being volume fourteenth of the Common Bench Reports — by John Scott — edited by the Hon. George Sharswood — together with "An Analytical Digest of the Reports of Cases, decided in the English Courts of Common Law, Exchequer and Exchequer Chamber and *Nisi Prius* in the year 1854, in continuation of the Annual Digest of the late Henry Jeremy, Esq., Barrister at Law. By William Tidd Pratt, of the Inner Temple, Barrister at Law. Arranged for the English Common Law and Exchequer Reports and distributed without charge to subscribers."

That these are both useful and valuable publications we need not say. The Digest would seem to be of use independently of the Reports. Our excellent friends in Boston and Philadelphia, are engaged in a contest which we may perhaps call "The Battle of the Reports," and their respective advertisements at the end of our journal set forth the merits of their publications with due earnestness. The lawyer who has either, has a mass of decisions greater than most of us can manage. The Philadelphia series is well known and established.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Commissioner.
Ager, Richard H.	Haverhill,	March 19, 1855,	N. W. Harmon.
Bancroft, James H.	Worcester,	April 27,	Charles Brimblecom.
Beals, Daniel T. *	Abington.	" 23,	Perez Simmons.
Beals, Ephraim H.*			
Belcher, Allen A.	Randolph,	" 13,	Charles Endicott.
Blaisdell, Jacob	Carlisle,	" 28,	Isaac S. Morse.
Bliss, Alexander	New Bedford,	Feb. 27,	Joshua C. Stone.
Bliss, Chauncey	Lee,	April 12,	James Bradford.
Bradlee, George	Haverhill,	March 10,	N. W. Harmon.
Bradlee, Samuel P.	Haverhill,	Feb. 5,	N. W. Harmon.
Brown, Albert C.	Springfield,	April 21,	Henry Vose.
Brown Willis	Uxbridge,	" 6,	T. G. Kent.
Bulger, Thomas H.	Lowell,	" 20,	Isaac S. Morse.

* For Notes to the above references, see next page.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Commissioner.
Bustin, William H.	Watertown,	April 7, 1855,	Isaac S. Morse.
Carpenter, Shepherd	Sharon,	" 19,	Charles Endicott.
Carpenter, James	Sharon,	" 19,	Charles Endicott.
Conant, Charles	Worcester,	" 9,	Alexander H. Bullock.
Corbett, George W.	West Roxbury,	" 2,	Francis Hilliard.
Craff, William †	Marblehead,	" 18,	John G. King.
Day, Edmund	West Springfield,	" 30,	Henry Vose.
Day, Luther	Haverhill,	March 19,	N. W. Harmon.
Dockham, Stevens	Lawrence,	Jan. 9,	N. W. Harmon.
Drew, George G. ‡	West Roxbury,	April 17,	Francis Hilliard.
Gillmore, Horatio W.	Walpole,	" 6,	Charles Endicott.
Goodale Abraham §	Newburyport,	March 6,	N. W. Harmon.
Greenman, William G.	Haverhill,	April 9,	John G. King.
Grose, William	Cambridge,	Jan. 30,	Josiah Rutter.
Harding, Thomas, Jr.	Haverhill,	April 23,	N. W. Harmon.
Hill, George R.	Lawrence,	Jan. 18,	N. W. Harmon.
Holman, Joseph	Boston,	April 6,	John M. Williams.
Hunt, John S.	Boston,	" 2,	Charles Demond.
Johnson, Giles B.	Boston,	" 14,	Isaac Ames.
Jones, Abel	Littleton,	" 14,	Isaac S. Morse.
Joslin, Walton	Westminster,	" 12,	C. H. B. Snow.
Keep, George	Springfield,	" 14,	Henry Vose.
Ladd, Jacob	Springfield,	" 7,	Henry Vose.
Lane, Julius M. ‖ } Lane, Lorenzo ‖ }	Chicopee,	" 13,	Henry Vose.
Litchfield, Isaac	Scituate,	" 2,	Perez Simmons.
Matthews, David P. ¶	Boston,	" 16,	Isaac Ames.
Mein, Walter R.	Boston,	" 26,	Charles Demond.
McCarthy, Michael	Salem,	" 4,	John G. King.
Morgan, Michael	Lynn,	" 26,	John G. King.
Newman, Mark	Newburyport,	Feb. 15,	N. W. Harmon.
Packard, Samuel W.	Conway,	April 23,	David Aiken.
Paine, Thomas H.	Weymouth,	" 9,	Charles Endicott,
Perry, Nathaniel M.	Plymouth,	March 26,	Perez Simmons,
Plympton, Ralph	Southwick,	Jan. 20,	Edward B. Gillett.
Pool, William	Abington,	April 7,	Perez Simmons.
Pope, Franklin M.	Marlboro',	" 20,	John W. Bacon.
Prest, Edward	Worcester,	" 13,	Alexander H. Bullock
Putnam, Allen W.	Scituate,	" 24,	Perez Simmons.
Reynolds, Jason B. ‖	Wrentham,	" 16,	Charles Endicott.
Rowe, Phillip C.	Springfield,	" 14,	Henry Vose.
Sawyer, Christopher B. §	Newburyport,	March 6,	N. W. Harmon.
Snow, Richard D. †	Marblehead,	April 18,	John G. King.
Sparhawk, David H. **	Roxbury,	" 2,	Isaac Ames.
Stone, Richard C.	Sherborn,	" 7,	Asa F. Lawrence.
Switzer, John	Lynn,	" 14,	John G. King.
Talbot, David ‡	West Roxbury,	" 17,	Francis Hilliard.
Tinkum, Oliver G.	North Bridgewater,	" 23,	Perez Simmons.
Tirrell, Elbridge G.	Weymouth,	" 12,	Francis Hilliard.
Wellington, Heliodorus	Boston,	" 4,	Isaac Ames.
Wells, Thomas P.	Roxbury,	" 7,	Charles Demond.
Whitney, Joseph S. ** } Whitney, William ** }	Boston,	" 2,	Isaac Ames.
	Boston,	" 2,	Isaac Ames.
Williams, James A.	Boston,	" 2,	Isaac Ames.
Wing, Frederic F.	Melrose,	" 4,	Asa F. Lawrence.
Wingate, Charles	Haverhill,	Feb. 14,	N. W. Harmon.
Wright, Calvin S.	Sheffield,	April 14,	James Bradford.
Wright, Gurdon H.	Sheffield,	May 9,	James Bradford.
Young, William E.	Woburn,	April 11,	Asa F. Lawrence.

* E. H. & D. T. Beals, "as copartners and individuals.
† "Partners."
‡ Drew & Talbot.
§ "Copartners."
‖ Lane & Co.
¶ Late partner with Solon L. Snow, as D. P. Matthews & Co. and S. & M.
** William Whitney & Co.

The Commissioners are respectfully requested to make their returns as legible as possible.